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THE CODE OF CRIMINAL PROCEDURE

BEING

ACT X OF 1882

AS AMENDED BY ACTS III OF 1884, *X OF* 1882, *V AND XIV OF* 1887, *I, III, V AND XIII OF* 1889, *III, IV, X AND XII OF* 1891.

TOGETHER WITH

RULINGS, CIRCULAR ORDERS, NOTIFICATIONS, ETC., OF ALL THE HIGH COURTS IN INDIA; AND NOTIFICATIONS AND ORDERS OF THE GOVERNMENT OF INDIA AND THE LOCAL GOVERNMENTS.

EDITED, WITH COPIOUS NOTES,

BY

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Third Edition,

By GILBERT S HENDERSON, M A

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PREFACE TO THE THIRD EDITION.

THIS EDITION, like the second, has been prepared by me without the assistance of Mr. Agnew.

Since the publication of the Second Edition in 1886 the number of decisions upon the Code has been so great that, in order to embody references to all of them without making the book inconveniently bulky, it has been found necessary to alter the size of the type. The various cases have all been carefully noted under the appropriate sections. The cases from the Indian Law Reports have been brought up to the July numbers (inclusive) of the Reports of this year of the different Presidencies.

The Code itself has undergone considerable change at the hands of the Legislature since it was originally passed in 1882, there having been no fewer than twelve amending Acts, mostly of general application. The alterations made by these Acts have been shown in the text of the Code.

Attention has been drawn to the various Regulations dealing with Criminal Procedure. The last of these is Regulation V of 1893 (Sonthal Pergunnahs Justice) passed on the 17th day of March 1893. Regulation V of 1892 (Upper Burma, Criminal Justice) has not only been noted under the Sections to which it applies, but has been printed *in extenso* in the Appendix.

The decisions of the Punjab Chief Court, reported in the official reports known as the Punjab Record, have again, as in the previous editions, been incorporated in the notes and brought up to date.

For the preparation of the Index, I am indebted to Mr. Dawes Swinhoe, Barrister-at-Law.

G. S. H.

August, 1893.

PREFACE TO THE SECOND EDITION.

MR. JUSTICE AGNEW having, on his appointment as Recorder of Rangoon, declined to take an active part in the preparation of this edition, it has, it is to be regretted, been prepared without his direct assistance. His notes, however, he very kindly placed at my disposal, and from these I have derived much valuable aid.

Since the publication of the former edition, the number of decisions upon the new Code has been very great. Some idea of their number may be gathered from the fact that, although about 78 pages of tabular statements have been omitted from this edition as being unnecessary, the body of the Code itself with the notes upon it covers 493 pages, while in the former edition, with the 78 pages of tabular statements included, it covered only 469 pages, showing an increase of upwards of 100 pages of notes of cases.

No trouble has been spared to make the Index as copious and useful as possible.

The Code has been in many important particulars amended by Acts III of 1884 and X of 1886, and the alterations have been carefully noted.

At the suggestion of a number of gentlemen in the Punjab, the decisions of the Punjab Chief Court reported in the Punjab Record have been incorporated.

The notes for the guidance of Police-officers have been considerably amplified. These, with the references to the Bengal Police Manual, will, it is hoped, render this edition of greater service to Police-officers.

The references to the rules and orders of the Calcutta High Court are from the second edition prepared by Mr. Wilkins.

The comparative tables showing the corresponding sections of the new and old Codes have been retained, and will be found as in the former edition at the commencement of the work.

The cases from the Indian Law Reports have been brought up, in the Addenda, to the October numbers (inclusive) of the Reports of the different Presidencies.

I desire to express my thinks to Mr. Gordon Leith, now Officiating Chief Magistrate at Calcutta, and to other Members of the Bar, for many useful suggestions in the preparation of this edition.

G. S. H.

CALCUTTA ;
November 15, 1886.

PREFACE TO FIRST EDITION

THE object of the New Code of Criminal Procedure is to consolidate and amend the law relating to criminal procedure, which is at present to be found in Act X of 1872 as amended by Act XI of 1874, Act X of 1875, and Act IV of 1877 Most of the provisions of the existing law have been retained, but they have been re-arranged according to a different method We trust that the comparative tables at the commencement of the work, and the notes appended to each section will enable the reader easily to ascertain the corresponding sections of the New and Old Codes and Acts

In preparing this edition, we have endeavoured to give references to all the cases of importance bearing on the subject of criminal procedure decided by the High Courts at the Presidency-towns and by the High Court at Allahabad, and also to give references to the rules, orders, and notifications of those Courts and of the Government of India and Local Governments

The rules and orders of the Calcutta High Court, we have taken from the edition published under the orders of the High Court in 1881 under the supervision of Messrs Crawfurd and Wilkins Those of the Madras High Court are taken from the digest of rulings and orders compiled by Mr Weir The rules and orders of the Bombay High Court have been taken from the Circular Order-book published under the authority of the Court in 1871, and amended from time to time, and those of the Chief Court of the Punjab from the Circular Order-book published, under the orders of Government, by Mr Smyth in 1874 In order to avoid omissions, we have also gone through the Gazettes of the different Local Governments from 1872 to the end of 1881

We desire to express our thanks to Mr Whitley Stokes and to the Members of the Legislative Department for furnishing us with all papers relative to the Bill and for allowing us access to the Gazettes Without this assistance we should have been unable to insert many rules and orders which, we hope, will add to the value of our work

W T A
G S H

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ADDENDA AND CORRIGENDA.

Page 3. End of note to s. 4 (*a*) add "See *Bharut Chunder Nath* v. *Jahed Ali Biswas*, I. L. R. 20 Cal. 481."

,, 4. After 9th line from bottom add "*Sonthal Pergunnahs* :—See Reg. V. of 1893 as to meaning of High Court in reference to proceedings against European British subjects and others jointly charged with European British subjects."

"*Baluchistan*."—As to power of Chief Commissioner of British Baluchistan as a High Court, See Reg. II of 1893."

,, 8. Line 34, *for* Reg. VII of 1892 *read* "Reg. V of 1892."

,, ,, After line 34 add "*Sonthal Pergunnahs* :—See Reg. V of 1893, s. 4 (II)."

,, 9. End of note to s. 9 add "*Sonthal Pergunnahs* :—See Reg. V of 1893, s. 4 (II)."

,, 26. Last line, after "*Emp.* v. *Sashe Bhusan Chuckrabutty*, I. L. R. 4 Cal. 623", add "*Emp.* v. *Gopal Singh*, I. L. R. 20 Cal. 316."

,, 41. 7th line, before "In re *Bhoobuneshwar Dutt*, 2 C. L. R. 80," add "*Emp.* v. *Krishna Gobind Das*, I. L. R. 20 Cal. 358."

,, 85. End of 4th line from bottom add "See *Dhunput Singh* v. *Chutterput Singh*, I. L. R. 20 Cal. 513 : *Emp.* v. *Gobind Chandra Das*, I. L. R. 20 Cal. 520."

,, 124. ——— ——— add "See Punjab Record, 1893, p. 47."

,, 130. After 14th line add "*Sonthal Pergunnahs* :—See Reg. V of 1893, s. 4 (II)."

,, 134. After the 9th paragraph add "See *Baperam Surma* v. *Gouri Nath Dutt*, I. L. R. 20 Cal. 474."

,, 139. After 9th paragraph add "The High Court at Allahabad, dissenting from *Atchayya* v. *Gangayya*, I. L. R. 15 Mad. 138 (F. B.), held that a Registrar acting under s. 73 of the Registration Act, 1877, is not a Court within the meaning of s. 195 of the Code—*Emp.* v. *Ram Lall*, I. L. R. 15 All. 141."

,, 142. Line 34 add "See *Jatra Shekh* v. *Reazut Shekh*, I. L. R. 20 Cal. 483."

,, 163. Note *Queen-Emp.* v. *Khoda Uma*, I. L. R. 17 Bom. 369, under s. 227.

,, 174. After 6th paragraph of notes to s. 238 add "See *Emp.* v. *Khoda Uma*, I. L. R. 17 Bom. 369."

,, 174. After 3rd paragraph add "See *Jatra Shekh* v. *Reazat Shekh*, I. L. R. 20 Cal. 483."

,, 175. End of 6th paragraph add "See *Emp.* v. *Chundra Bhuiya*, I. L. R. 20 Cal. 537."

,, 166. Note *Emp.* v. *Raghu Nath Dutt*, I. L. R. 20 Cal. 413, under ss. 233, 234 and 235.

,, 184. End of 2nd paragraph of notes to s. 257 add "See *Nilkanto Singh* v. *Emp.*, I. L. R. 20 Cal. 409."

,, 192. End of note to s. 268 add "See *Emp.* v. *Ram Lall*, 15 All. 136."

,, 250. End of 5th line insert "See *Rohimuddi* v. *Emp.*, I. L. R. 20 Cal. 353."

,, 254. End of note to s. 374 add "*Sonthal Pergunnahs* :—See Reg. V of 1893."

,, 259. After line 6 insert "See *Emp.* v. *Sita Nath Mitra*, I. L. R. 20 Cal. 478."

,, 318. At end of 2nd paragraph add "See *Baperam Surma* v. *Gouri Nath Dutt*, I. L. R. 20 Cal. 474."

,, 324. Before beginning of note to s. 488 insert : "An application for maintenance ought not to be dismissed on the failure on the part of the applicant to comply with an order for payment of process fees. *In re Ponnammal*, I. L. R. 16 Mad. 234."

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BENGAL SECRETARIAT LIBRARY

THE

CODE OF CRIMINAL PROCEDURE

BEING

ACT X OF 1882.

AS AMENDED BY ACTS III OF 1884, X OF 1886, V AND XIV OF 1887, I, III, V, AND XIII OF 1889, III, IV, X AND XII OF 1891.

(Received assent of the Governor-General in Council on the 6th March 1882.)

An Act to consolidate and amend the Law relating to Criminal Procedure.

Preamble

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows :—

PART I.

PRELIMINARY

CHAPTER I.

DEFINITIONS, ETC.

Short title Commencement

1. This Act may be called "The Code of Criminal Procedure, 1882 :" and shall come into force on the first day of January, 1883 ;

It extends to the whole of British India ;

"British India," *i.e.*, the territories for the time being vested in Her Majesty by Stat. 21 and 22 Vic Cap 106, other than the Settlement of Prince of Wales' Island, Singapore and Malacca—Act I of 1868 (General Clauses Act), s. 2 (8).

The Code was extended with modifications to Upper Burmah, except the Shan States, by Reg VII of 1880, Reg VI of 1890, Reg. XIV of 1887, *s.* 4 (now amended by Act XI of 1889) and Reg V. of 1892, s. 2. See Reg. V of 1892 *in extenso* in Appendix, *infra.—Burmah Gazette*, 1893, Pt I p. 360. As to the Northern and Southern Shan States, see Notifications in Burmah Code, pp 501, 502.

In Burmah, under Act XI of 1889, the Local Government has power under certain conditions to exempt the Judicial Commissioner, the Recorder, or the Special Court from the operation of so much of the Code as relates to the mode of recording judgments, orders and sentences and the taking down of evidence and the admission of affidavits.

In Assam, under Reg. II of 1880 and Reg. III of 1884, the Chief Commissioner with the sanction of the Governor General in Council may declare that any enactment in force shall cease to be in force, and the Code has been declared to have ceased to be in force in the Naga Hills, the Dibrughar Frontier Tracts and North Cachar Hills -see *Assam Gazette*, 84, Pt. II, p. 212, the Garo Hills and Khasia and Jaintia Hills—*Ibid*, Pt. I, p 670, and in the Mikir Hills—*Ibid*, Pt II, p. 705.

It has also been extended to the Sonthal Pergunnahs by Reg III of 1886, s. 6, amending Reg. III of 1872, see *Dular Dat Ras* v *Nijabat Hossein*, I. L. R 12 Cal. 536.

The Code is applied with certain modifications to the Andaman and Nicobar Islands by Reg III of 1876, s. 13, as amended by Reg III of 1884.

The Island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat. 21 and 22 Vic., cap. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858, and the Indian Penal Code (XLV of 1860) and the Code of Criminal Procedure (X of 1882) extend in their entirety to the whole of British India, and, therefore, to the Island of Perim.—*Emp.* v. *Mangal Tekchand*, I. L. R. 10 Bom. 258."

Local extent.

But, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction* or power† conferred, or any special form of procedure prescribed, by any other law now in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the Police in the towns of Calcutta and Bombay ;

The provisions of ss. 54, 55 and 56 [as amended by Act X of 1886, s. 3], 68, 84, 127 and 202 and of the 3rd column of Schedule No. II apply specifically to the Police in Calcutta and Bombay.

Police in Presidency-Towns.—As to Calcutta Police, see Act IV (B. C.) of 1866, and III (B. C.) of 1890.

As to the Police of the town of Bombay, see Act XIII of 1856, Act XLVIII of 1860, Bom. Act II of 1879, Bom. Act IV of 1882.

As to the Police of the town of Madras, see (Mad.) Act VIII of 1867.

Chapter XIV of this Act deals with information to the Police and their powers to investigate, and apparently the only section in that chapter which applies to the Police in Calcutta and Bombay is s. 156.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

As to the powers of arrest, etc., of the Police in Presidency towns, see notes to Chap. V, *post*, and 3rd column of Sched. II.

(*b*) any officer duly authorized to try petty offences in military bazars at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively ; [Repealed by Act XIII of 1889, Sched.]

(*c*) heads of villages in the Presidency of Fort Saint George ; or

(*d*) village Police-officers in the Presidency of Bombay :

See Act VII (Bom.) of 1867, ss. 14—16 ;

(*e*) *and nothing in sections* 174, 175 *and* 176 *shall apply to the Police in the town of Madras.* [Repealed by Act V of 1889, s. 4.]

Special Form of Procedure.—For example, the provisions of "The Indian Articles of War," Act V of 1869.

Repeal of enactment.

2. On and from the first day of January, 1883, the enactments mentioned in the first Schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications, &c., under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules and appointments made, under any enactment hereby repealed or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

Appointments.—A person appointed a Magistrate of the 2nd class under Act X of 1872, it has been held, is incompetent, since the present Code came in force, to pass a sentence of whipping, unless he is specially empowered to do so under s. 32, *infra*, although, under the repealed Act, the power to pass such a sentence was inherent in him—*Emp.* v. *Bayvanti Ravji*, I. L. R. 7 Bom. 303.

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* See *Surendronath Banerjee* v. *C. J. of Bengal*, I. L. R. 10 Cal. (P. C.) 109.

† *e.g.*, by the Abkari Law (Bom. Act V of 1878).—*Emp.* v. *Gustadji*, I. L. R. 10 Bom. 181.

In *Emp* v *Budara Janni* I L R 14 Mad 121 the special jurisdiction relating to the administration of criminal jurisdiction in the Agency Tract of Vizagapatam conferred by Madras Act XXIV of 1839 s. 3 was held to be preserved

3 In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No XXV of 1861, or Act No X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section

References to Code of Criminal Procedure and other repealed enactments.

The Reformatory Schools Act V of 1876 by s 2 enacted that on and from the date on which it came in force in any Province s 318 of Act X of 1872 should be repealed therein The present Code was passed subsequently to Act V of 1876 and s 399 of this Code is the section corresponding to s 318 of the old Code and it was held that in the Madras Presidency the operation of s 399 is repealed "so far as may be practicable" by Act V of 1876—*Emp* v *Madasami* I L R 12 Mad 94

In every enactment passed before this Code comes into force, the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," the expression "Magistrate of a Division of a District" shall be deemed to mean "Subdivisional Magistrate," the expression "Magistrate of the District" shall be deemed to mean "District Magistrate," and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate"

Expressions in former Acts

Expressions in former Acts —The expressions in the first part of the second paragraph are taken from Act X of 1872 s 2 para 4 The word Magistrate includes all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure—*Act I of* 1868 *s* 2 *cl* (13) See *Emp* v *Mangal Teckchand*, I L R. 10 Bom 263 p 271

4 In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context —

Interpretation clause

(*a*) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include the report of a Police-officer

"Complaint"

The definition excludes the report of a Police-officer and information given to a Police officer

Under s 250 [for which s. 560 has now been substituted by Act IV of 1891 s 2] compensation it was held could not be awarded when the charge having been made to the Police the Magistrate had taken cognizance of the case upon receiving a charge sheet against the accused sent in by the Police *Emp* v *Polavarapu* I L R 7 Mad 563—because there was no complaint as defined by this section See *Ishri* v *Bakhshi* I L R 6 All 96

So a charge of defamation not contained in the complaint to the Magistrate but added subsequently by the Magistrate upon statements made by the complainant on his examination under s 200 *post* was held not to be a legal complaint so as to enable the Magistrate under s 198 to take cognizance of the offence in respect of which the charge was added —*Emp* v *Deokinandan* I L R 10 All 39 see *Emp* v *Kallu* I L R 5 All 233

A *yadast* sent by a Revenue officer to a Magistrate charging a person with having disobeyed a summons issued by him amounts to a complaint *Emp* v *Manu* I L R 11 Mad 443

An application for maintenance is not a complaint of an offence—*Hildephonsus* v *Malone* Punjab Rec 1885 p 26 See *Nur Mahomed* v *Bismillah Jan* I L R 16 Cal 781 and *In re Tabee Bibee*, I L R 5 Cal 536 (S C) 5 C L R 456 *per* WILSON, J

The complaint must be of an offence—*In re Kottalanada* I L R 9 Mad 374 see *Mangal Singh* Punjab Rec 1884 p 10

(*b*) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the Police or by any person (other than a Magistrate or Police-officer) who is authorized by a Magistrate in this behalf

Investigation

Compare the definition in Act X of 1872, s. 4. The definition has been extended so as to include the proceedings of persons authorized by a Magistrate under ss. 150 or 202, *infra*, to make local investigations.

"Inquiry": (*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

See *Sadagopacharyar* v. *Rayavacharyar*, I. L. R. 9 Mad. 282, and ss. 202 and 350, *post*.

"Judicial proceeding": (*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken:

This definition corresponds with the first part of the definition in Act X of 1872, s. 4, except that the word 'legally' has been added. This was in consequence of the decision of the Allahabad High Court in the case of *Queen* v. *Gholam Ismail*, I. L. R. 1 All. 1; see the judgment of Turner, Offg. C. J., p. 6. Compare s. 193 of the Penal Code (Act XLV of 1860). See *In re Troylokhanath Biswas*, I. L. R. 3. Cal. 742; and *Queen* v. *Soondur Putnaick*, 3 W. R. Cr. 59.

Proceedings of a Magistrate under s. 88, *post*, are not judicial proceedings—*Emp.* v. *Sheodihal Rai*, I. L. R. 6. All. 487; but proceedings under s. 8 of the Reformatory Schools Act, V of 1876, are judicial proceedings.—*Emp.* v. *Manaji*, I. L. R. 14 Bom. 381.

"Writing" & "Written": (*e*) "Writing" and "written" include "printing," "lithography," "photography," "engraving," and every other mode in which words or figures can be expressed on paper or on any substance:

"Subdivision": (*f*) "Subdivision" means a subdivision made under this Code of a District:

By s. 8, *post*, all existing subdivisions which are now usually put under the charge of a Magistrate are to be deemed to have been made under this Code.

"Province": (*g*) "Province" means the territories for the time being under the administration of any Local Government.

"Local Government" means the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and includes a Chief Commissioner.—*General Clauses Act, I of* 1868, *s.* 2, *cl.* 10.

"Presidency-town": (*h*) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

"High Court": (*i*) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab and the Recorder of Rangoon:

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area;

or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf:

The definition of "High Court" in the second paragraph is taken from Act I of 1868, s. 2, cl. (11). See also special definition, *infra*, s. 260. The Court of the Recorder of Rangoon was not included in the former Code, but power to try European British subjects was conferred on the Recorder by s. 55 of Act VII of 1872.

Upper Burmah except the Shan States.—See Reg. V of 1892, Sched. (I).

As to the Recorder of Rangoon see Act XI of 1889, ss. 28, 45, 48, 66, 91, 98, and 101; see also Reg. VII of 1880, as modified by Act XI of 1889, Sched. II.

The last clause to this definition was added so as to enable the Governor-General in Council to appoint in outlying territories, where no such Court is established by law, an officer to perform its functions under the Code.

The definition of High Court must be read with reference to the "special proceedings" against European British subjects contemplated in Chap. XXXIII and not with reference to proceedings generally against Europeans including proceedings in which they waive their rights. If therefore in

any particular case the special rules in Chap. XXXIII cease to have any application the definition of High Court in the former part of this clause ceases also to have any application to such a case. The definition in the latter part of the clause then prevails and the case falls within the category of "other cases" to which that part applies.—*Emp* v. *Grant*, I L R 12 Bom 561 In that case the accused, a European British subject, waived his right to be tried as such, and was tried and sentenced to 6 months' imprisonment by the City Magistrate of Karachi It was held that not having been tried under the special procedure for trial of European British subjects the Sadar Court in Sind, which under Bombay Act XII of 1866 was the highest Court of appeal in Sind had the revisional powers of a High Court by virtue of the latter part of s. 4. cl (1).

"Chief Justice":

(*j*) "Chief Justice" includes also the senior Judge of the Chief Court of the Panjab and the Recorder of Rangoon.

This section is now printed as amended by Act XI of 1889, Sched. II.

"Advocate-General":

(*k*) "Advocate-General" includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:

"Clerk of the Crown":

(*l*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

"Public Prosecutor":

(*m*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction;

A private complainant may instruct a pleader or a counsel, and the Public Prosecutor may avail himself of their services—s 495, *post*, and in doing so he does not deprive himself of the management of the case.—*In re Narayan M. Pendshe*, 11 Bom H. C. R. 102.

A Public Prosecutor should be without a personal interest in the cases which he conducts. Accordingly, the appointment of the Magistrate, who in the first instance had tried and convicted the accused, to be Crown Prosecutor to conduct an inquiry subsequently directed in the same case, was, in *Reg* v *Kashinath Dinkar*, 8 Bom. H C. R., Cr. Cas , 126, 153, censured as being unprecedented and objectionable.

Section 270 provides that, in every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

As to the persons who may conduct prosecutions, see s. 495, *post*.

"Pleader"

(*n*) "Pleader," used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceedings:

The law now in force is the Legal Practitioners' Act (XVIII of 1879), amended by Act IX of 1884. Section 340, *post*, provides, that every person accused before a Criminal Court may, of right, be defended by a pleader.

"Police-station".

(*o*) "Police-station" means any post declared, generally or specially, by the Local Government, to be a Police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and "Officer in charge of a Police-station" includes, when the officer in charge of the Police-station is absent *from the station house* (Act V of 1887, s. 1) or unable from illness to perform his duties, the Police-officer present *at the station house* (Act V of 1887, s. 1) who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other Police-officer so present:

"Officers in charge of a police-station".

The provisions as to substitution are taken from Act X of 1872, s. 136 The powers of an officer in charge of a Police station may be exercised by Police officers superior in rank throughout the local area to which they are appointed.

As to the powers of an officer in charge of a Police station, see ss. 55, 56, 91, 127, 128, 153, 156, 157, *post*, and as to his duties, see ss. 55, 62, 154, 169, 173, 174, 175, *post*.

"Offence": (*p*) "Offence" means any act or omission made punishable by any law for the time being in force:

In Madras it was held that a complaint of illegal seizure of cattle under s. 20 of the Cattle Trespass Act was not a complaint of an offence within the meaning of this definition.—*In re Kottalanaula*, I. L. R. 9 Mad. 374.

"Cognizable offence": "Cognizable case": (*q*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may, in accordance with the second Schedule, or under any law for the time being in force, arrest without warrant:

"Non-cognisable offence": "Non-cognizable case": "Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant:

As to the first part of the definition, see Act XI of 1874, s. 1. The latter part is taken from the definition in Act X of 1872, s. 4. That definition has been amended so as to connect it with the second Schedule.

"Bailable offence": "Non-bailable offence": (*r*) "Bailable offence" means an offence shown as bailable in the second Schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence:

"Warrant case": (*s*) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months:

"Summons-case": (*t*) "Summons-case" means a case relating to an offence not so punishable:

"European British subject": (*u*) "European British subject" means—

(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grandchild of any such person by legitimate descent:

This definition corresponds substantially with the definitions in Act X of 1872, s. 71, and Act X of 1875, s. 3.

In the case of *The Queen* v. *Meares*, 14 B. L. R. 106, a European British subject in the mofussil was convicted by a Magistrate under the provisions of s. 71 of Act X of 1872. He appealed, on the ground (*inter alia*) that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor-General in Council had not the power, under 24 & 25 Vict. c. 67, to subject a European British subject to any jurisdiction other than that of the High Court; and that, therefore, the provisions of the Code under which the prisoner had been tried were *ultra vires* and illegal. It was held, that the jurisdiction of the High Court, as given by the Letters Patent, was subject to the legislative powers of the Governor-General in Council, and that the Magistrate had jurisdiction to try the case.

As to domicile, see Part II, ss. 5—19 of the Indian Succession Act, X of 1865.

The High Court at Calcutta was empowered by the Governor General in Council to discharge all the functions of a High Court under the Code of Criminal Procedure, in all criminal proceedings against European British subjects, or persons jointly charged with European British subjects, in the Civil Commissionership of the Andaman and Nicobar Islands—*Gazette of India*, 1878, p. 132.

The European Vagrancy Act (IX of 1874) provides (s. 30), that any European British subject who, upon the summary inquiry mentioned in section five, has been determined to be a vagrant, or who has been convicted under section twenty-two or twenty-three, shall, so long as he remains in India, be subject beyond the limits of the Presidency towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chap. XXXVIII of the same Code) applicable to a European not being a British subject.

If from any cause he is committed or held to bail by the Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of the section.

And, save as in the section provided, nothing shall be deemed to confer jurisdiction over European British subjects on Magistrates who, if the Act had not been passed, would have had no such jurisdiction.

As to the trial of European British subjects, see Chap. XXXIII.

"Chapter": "Schedule":

(*v*) "Chapter" means a chapter of this Code; and "Schedule" means a schedule hereto annexed:

"Place":

(*w*) "Place" includes also a house, building, tent and vessel.

Words referring to acts.

Words which refer to acts done extend also to illegal omissions; and

Words to have same meaning as in Penal Code.

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

Trial of offences under Penal Code.
Trial of offences against other laws.

The provisions of this section relating to the procedure under which "all offences under any other law" are punished do not include a contempt of the High Court committed by the publication of a libel out of Court when the Court is not sitting, although such contempt may include defamation—such a contempt being more than mere defamation and of a different character.—*Surendronath Banerjee* v. *Chief Justice of Bengal*, I. L. R. 10 Cal. (P. C.), 109.

The High Courts, in the Indian Presidencies, are superior Courts of Record. The offence of contempt and the powers of the High Courts to punish it are the same in such Courts as in the superior Courts in England. These powers, which formed a part of the Common Law, were conferred upon the Supreme Courts when they were established in the Presidency-towns. The jurisdiction of the High Courts to commit for contempt has not been affected by this Code.—*Ib.* (P. C.), 109.

Section 549 gives power to the Governor-General in Council to make rules consistent with the Code and the Army Act, 1881, or any similar law for the time being in force. As to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-Martial—See Beng. Reg. XX of 1825.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

Classes of Criminal Courts.

I.—Courts of Session:
II.—Courts of Presidency Magistrates:
III.—Courts of Magistrates of the first class:
IV.—Courts of Magistrates of the second class:
V.—Courts of Magistrates of the third class.

As to District Magistrates, see s. 10, *post*.

The word 'Magistrate' includes all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure.—*Act I of 1868, s. 2, cl. (13).*

B.—Territorial Divisions.

7. Every province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

Sessions Divisions.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Districts

The Local Government may alter the limits, or, with the previous sanction of the Governor-General in Council, the number of such Divisions and Districts.

Power to alter Division and Districts

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Existing Divisions and Districts maintained till altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Presidency towns to be deemed Districts

'Local Government' means the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and includes a Chief Commissioner.—*Act I of* 1868, *s.* 2, *cl.* (10).

Cachar was declared to be one of the Sessions Divisions of Assam.—*Assam Gazette*, 1874, p. 3

Burmah —The District of Rangoon was for the purposes of the former Code, Act X of 1872, and for no other purpose, divided into the District of the Town of Rangoon and District of Rangoon; and the District of Amherst, for the same purpose, was divided into the District of the Town of Moulmein and District of Amherst.—*Gazette of India*, 1874, p. 62. Now by s. 29 of Act XI of 1889, subject to the provisions of ss. 7 and 9 of this Code with respect to the alteration of the limits of Sessions Divisions and the appointment of additional Sessions Judges to exercise jurisdiction in Courts of Sessions, each division for the time being administered by a Commissioner is a Sessions Division, the Court of the Commissioner is the Court of Session for the Sessions Division and the Commissioner is the Judge of the Court of Session and the areas for the time being comprised within the local limits of the ordinary Civil jurisdiction of the Recorder and the Civil jurisdiction of the Court of the Judge of the Town of Moulmein are to be deemed not to be included in the divisions in which they are respectively situate. By s 30 of the same Act the area for the time being comprised within the local limits of the Civil jurisdiction of the Court of the Judge of Moulmein shall be a Sessions Division that Court shall be the Court of Session for the Sessions Division and the Judge of that Court shall be the Judge of the Court of Sessions.

Upper Burmah.—See now Reg VII of 1892, Sched. (II) & (X).

Bombay —In the Regulation Districts of the Bombay Presidency, the local limits of the jurisdiction of a Magistrate of a District are co extensive and co terminous with the territorial limits of the collectorate, of which such District Magistrate is in charge as Collector.—*Bombay Gazette*, 1873. p. 279.

By a notification of the Government of Bombay (No. 2336), dated the 6th May 1884, the Island of Perim was included within the Sessions Division and District of Aden, and the officer in command of the troops in Perim was empowered to commit persons for trial to the Court of Session at Aden.—*Gazette* 1884, p. 351, but it has been held that the Court of the Political Resident at Aden was not a Court of Session—*Emp.* v. *Mungal Teckchand*, I. L. R 10 Bom. 263, *Ibid* p. 274.

The last clause of s. 8 of Act IV of 1877 provided, that the area within which the Presidency Magistrates might exercise jurisdiction should be deemed to be a District within the meaning of the Code of Criminal Procedure and the Act.

8. The Local Government may divide any District outside the Presidency-towns into Subdivisions, or make any portion of any such District a Subdivision, and may alter the limits of any Subdivision.

Power to divide Districts into Subdivisions

All existing Subdivisions, which are now usually put under the charge of a Magistrate, shall be deemed to have been made under this Code.

Existing Subdivisions maintained.

This section gives the Local Government larger powers than the corresponding section (39) of Act X of 1872.

Under s. 7 of the Cantonments Act, XIII of 1889, a Cantonment Magistrate is to be deemed a Magistrate in charge of a Division of a District, *i.e.*, of a Subdivision, see s 4 (*f*), *ante*.

C.—Courts and Offices outside the Presidency-towns.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

Court of Session

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

As to the sentences which may be passed by Sessions Judges, Additional or Joint Sessions Judges, and Assistant Sessions Judges, see s. 31, *infra*.

A Joint Sessions Judge cannot exercise the powers of a Sessions Judge under Chap. XXXII, *post*, which deals with Reference and Revision.—*In re Musa Ismal*, I. L. R., 9 Bom. 104.

As to Burmah see Act XI of 1189, ss. 29 and 30, and note to s. 7, *supra*, and as to Upper Burmah, see Reg. V of 1892.

District Magistrate.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District magistrate.

Clause 3 of s. 7, *ante*, empowers the Local Government to alter Divisions and Districts.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns ; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

So much of this section as relates to the appointment of Magistrates corresponds with the first clause of s. 37 of Act X of 1872. The rest of the section, with the exception of the last paragraph, gives similar powers to those conferred by s. 49 of Act X of 1872, excluding the proviso. See *Bishesharnath*, Punjab Rec., 1884, p. 20.

All Magistrates of Districts in the undermentioned Provinces were invested with powers under s. 49 of Act X of 1872 :—

Bengal—*Gazette*, 1873, p. 6 ; Bombay—*Gazette*, 1873, p. 567 ; Madras—*Gazette*, 1873, p. 717 ; Panjab—*Gazette*, 1873, p. 75 ; N. W. P.—*Gazette*, 1873, p. 3 ; Burma—*Gazette*, 1873, Part II, p. 5 ; Oudh—*Gazette*, 1873, p. 2 ; Central Provinces—*Gazette*, 1873, Part Ia, p. 18.

No order of a Local Government under this section can legally have retrospective effect.—*Macdonald* v. *Riddell*, 16 W. R. Cr. 79.

A Cantonment Magistrate is a Magistrate appointed under this section—Act XIII of 1889, s. 7. See s. 17, *infra*.

Power to put Magistrate in charge of Subdivision.

13. The Local Governmentmay place any Magistrate of the first or second class in charge of a Subdivision, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Subdivisonal Magistrates.

Delegation of powers to District Magistrate.

The Local Government may delegate its powers unders this section to the District Magistrate.

A Division of a District is a Subdivision.—S. 4 (*f*), *ante*.

In Bengal, all Magistrates of Districts having Divisions have had the power delegated to them of placing any Magistrate of the first or second class in charge of the head-quarters Division, whenever they may be absent from their head-quarters.—*Calcutta Gazette*, 1873, Part I, p. 236. Similar powers have been delegated by the Local Government in Madras (*Gazette*, 1873, p. 717) ; and the powers of Local Governments have been delegated to the Commissioner in Sind.—*Bombay Gazette*, 1873, p. 473.

As to additional powers conferrible on Subdivisional Magistrates, see *infra*, s. 37.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or, in regard to cases generally, in any local area outside the Presidency-towns.

Special Magistrate.

Such Magistrates shall be called 'Special Magistrates.'

With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except, so far as may be necessary, for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

The following powers were, under Act X of 1872, conferred upon District Superintendents and Assistant District Superintendents of Police in Bombay :—

1. Power to endorse warrants or to order the removal of an accused person arrested under a warrant (ss. 168, 170). [ss. 83, 86]
2. Power to issue and endorse a search-warrant, and order delivery of things found (ss. 368, 372, 370). [ss. 96, 99, 101.]
3. Power to hold an inquest (s. 135). [s. 176.]
4. Power to issue search warrants otherwise than in the course of an inquiry (s. 377). [s. 98.]
5. Power to issue order to prevent obstruction (s. 518). [s. 144.]
6. Power to issue order prohibiting repetition of nuisance (s. 519). [s. 143.] —*Bombay Gazette*, 1873, p. 439

By a notification, dated the 1st May 1877, under the provisions of ss. 42 and 223 of Act X of 1872, the Governor of Madras was pleased to confer upon all Subordinate Judges in the Presidency the powers of a Magistrate of the first class in respect to offences generally, together with the power to try summarily all the offences mentioned in s. 222 of that Act; and to invest all District Moonsiffs with the powers of a Magistrate of the first class in regard to offences generally.—*Madras Gazette*, 1877, p. 287.

Upper Burmah.—See Reg. V of 1892, Sched. (III).

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Powers exercisable by Bench in absence of special direction.

The first paragraph of this section contains provisions similar to those of ss. 50 and 224 of Act X of 1872; the last paragraph corresponds with s. 51. Under s. 50 of Act X of 1872, it was decided that a Bench of Magistrates was competent only to hold *trials* for offences, and could not deal with miscellaneous matters, such as those coming under s. 530 of the Act.—*Sufferuddin* v. *Ibrahim*, I. L. R. 3 Cal. 754: (S. C.) 2 C. L. R. 263. That case turned upon the special wording of the section. The section empowered a Bench "to try such cases or classes of cases only and within such limits as the Government might direct." The Court having regard to the definition of the term "trial" considered that the section referred only to offences. Under the present section, however, there is nothing to prevent the Government from empowering Benches to deal with miscellaneous matters. In the absence of any special direction, Benches have, in fact, power under the latter paragraph to deal with such matters.

The following notification, dated the 6th May 1873, was published by the Government of Bengal, respecting Benches of Magistrates in the Districts of Dinagepore, Maldah, Rungpore, Chittagong, Tipperah, Dacca, Backergunge, Mymensing, Shahabad, Sarun, Tirhoot, and Kamroop :—

1. Under the direction of the Magistrate of the District, any two or more of the Honorary Magistrates in any district may, in that district, sit as a Bench in company with the Magistrate

of the District, or the Subdivisional Magistrate, or any salaried Magistrate subordinate to the Magistrate of the District, exercising not less than second class powers; and any Bench so constituted is vested with first class powers in respect of offences cognizable by Magistrates of the first class, and with powers of summary trial under s. 222 [260] of the Criminal Procedure Code.

2. Under the special order of the Magistrate of the District, any two Magistrates, honorary or salaried, of whom one is vested with not lessthan second class powers, may form a Bench with first class powers for the trial of any particular case or class of cases specially referred to them by the Magistrate of the District. Such Bench may also exercise summary powers under s. 222 [260], unless the order of reference is for trial in regular form.

3. Under the direction of the District Magistrate, any one of the Honorary Magistrates of a District may sit with any salaried subordinate Magistrate to form a Bench, and the Bench shall when so constituted, exercise second class powers in respect of offences cognizable by Magistrates of that class and powers of summary trial under s. 225 [261] of the Criminal Procedure Code, unless any member of the Bench has first class powers, in which case the Bench may also exercise those powers. If the Magistrate of the first class has summary powers under s. 222 [260], the Bench may exercise those powers.

4. Subject to the general orders of the Magistrate of the District, any two or more Honorary Magistrates may, in their respective towns or municipalities, sit together as a Bench for the disposal of offences under Municipal or Town Acts, and the conservancy clause of any Police Act, without the assistance of any salaried Magistrate, and such Bench shall exercise third class powers and powers of summary trial under s. 225 in respect of all cases.—*Calcutta Gazette*, 1873, p. 662.

The Presidency Magistrates are directed, by the Lieutenant-Governor of Bengal, to submit returns, showing the working of their Courts, to be sent to the Commissioner of Police. See Resolution, 31st December, 1872, *Calcutta Gazette*, 1872, p. 29.

Under s. 50 of Act X of 1872, Benches of Magistrates in the towns of Ootacamund and Coonoor in the Nilgiri District were invested with the powers of a Magistrate of the first class; and, under s. 224, the same Benches were empowered to try summarily all the offences mentioned in s. 222 [260] of Act X of 1872.—*Madras Gazette*, 1875, p. 1294.

An appeal lies under s. 407, *post*, from a conviction by a Bench of Magistrates invested with second or third class powers.—*Emp.* v. *Narayanasami*, I. L. R. 9 Mad. 36. See note to s. 414, *post*.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:—

Power to frame rules for guidance of Benches.

(*a*) the classes of cases to be tried;

(*b*) the times and places of sitting;

(*c*) the constitution of the Bench for conducting trials;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Compare Act X of 1872, ss. 52, 53. Under those sections the Magistrate of the District might make, vary, or annul rules subject to the orders of the Local Government. The present section, it will be noticed, only empowers the Local Government to make rules. See next section.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and

Subordination of Magistrates and Benches to District Magistrate;

every Magistrate (other than a Subdivisional Magistrate) and every Bench exercising powers in a Subdivision shall be subordinate to the Subdivisional Magistrate, subject, however, to the general control of the District Magistrate.

to Subdivisional Magistrate.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Subordination of Assistant Sessions Judges to Sessions Judge.

Neither the District Magistrate, nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14, and 15, shall be subordinate to the

Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

A Cantonment Magistrate is subordinate to the District Magistrate, or to the District Magistrate and the Sub-divisional Magistrate, as the case may be, under this section.—Act XIII of 1889, s. 7.

Under Act X of 1872, it was considered by the Madras High Court that, reading ss. 37, 40, 41, and 295 together, Magistrates were subordinate to the Sessions Court only for the purpose of reference to the High Court in cases in which revision is required.—*Proceedings, 18th Aug.*, 1873, 7 Mad. H. C. R., Appx., xxvii. It will be noticed, however, that the last paragraph of s. 295, which provided that, for the purposes of that section, every Magistrate in a Sessions Division should be deemed to be subordinate to the Sessions Judge of the Division, has been omitted from the present Code. In Madras, if a Magistrate be subordinate to the Head Assistant, the latter may call for explanation of his subordinate's proceedings; copies of such proceedings being required to be submitted to the appellate authority under Mad. H. C. Rule, dated 17th Nov., 1868. *Proceedings, 4th Aug.*, 1873, 7 Mad. H. C. R., Appx, xxvi.

All Magistrates subordinate to the District Magistrate are inferior to him.—*Opendronath Ghose* v. *Dukhini Bewa*, I. L. R. 12 Cal. 473 (F. B.) See *Emp.* v. *Laskari*, I. L. R. 7 All. (F. B.), 833: *In re Padmanabha*, I. L. R. 8 Mad. (F. B.), 18: *Thaman Chetti* v. *Alagiri*, I. L. R. 14 Mad. 309: *Emp.* v. *Pirya Gopal*, I. L. R. 9 Bom. 100: *Shamsuddin Khan*, Punjab Rec., 1885, p. 82.

A Joint Sessions Judge cannot exercise the powers of the Sessions Judge under Chap. XXXII, *post* (of Reference and Revision). A Collector, as such, not being subject to the revisional jurisdiction of the High Court in criminal matters, that Court, in the exercise of such jurisdiction, it was held, was not competent to deal with an alleged illegal order made by the Collector under the Penal Code.—*In re Dianut Hosen*, 10 C. L. R., 14. In that case a Collector fined a Muktear under s. 182 of the Penal Code for making false statements when appearing in support of a petition.

See note to s. 435, *post*.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Local limits of their jurisdiction.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

See Calcutta Port Act, III of 1890, and the Indian Ports Act, XII of 1875.

Bombay Court of Petty Sessions

20. Every Presidency Magistrate in the Town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

Act IV of 1877, s. 8, last para., and s. 9, last para. The 1st day of April 1877 was when Act IV of 1877 came into force.

Chief Magistrate.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in Session.

The following rules were issued in Bombay under s. 9 of the Presidency Magistrates' Act:

1. *Hours of Business.*—The Magistrates will sit ordinarily from 11 A.M. to 5 P.M. The summons office opens at 10 A.M. The holidays are the same as those entered in the Government list, subject to special arrangement to be made by the Magistrates in communication with the Chief Magistrate for the despatch of emergent business.

2 *Applications for Process.*—Ordinary applications for process are to be made to the Magistrates on their first taking their seats on the Bench in the morning.

3. Professional gentlemen applying on behalf of their clients for the issue of any process are requested to furnish the summons clerk with a draft of the charge they wish to be entered on the process. In important cases much time will be saved, if the complainant be provided with a written information, setting forth the grounds on which the application may be based.

4. *Order of Hearing Charges.*—Cases will be taken, as far as practicable, in the following order

1*st*.—Night charges, and prisoners in custody.

2*nd*.—Summons and warrant cases, subject to any cases being specially appointed for a particular hour.

5 *Court Business to be transacted in Person.*—All business with the Magistrates should generally be transacted in person, or by counsel, attorney, or pleader. The Magistrates cannot undertake to reply to written communications.

6. The chief clerk of the Court and the clerk to each Magistrate will be at all times ready to furnish information as to the course of business

7. *Copies of Records.*—Copies of records in the Presidency Magistrate's Court will be granted to persons authorized to receive the same upon payment of the copying and examining fee calculated at the rate of five annas per folio of 90 words or fraction of 90 words, provided that the minimum for any copy or extract will be five annas

Prisoners will be granted, as a matter of right, copies of records, at the rate of two annas per folio of 90 words or fraction of 90 words.

8. Written applications for copies of records may be presented on any Court-day to the chief clerk between the hours of 11 A.M. and 3 P.M.

9. All applications for copies will be registered and attended to strictly according to the order of their presentation.

10. If the chief clerk sees no objection to granting the copy, he will initial and date the application, and cause the copy to be made. If he sees reason to object to the application, he will take the orders of the Magistrate.

11. No suitor or pleader will be allowed to make copies of records either personally or by his agent or clerk.

12. No copy will be delivered to the party applying for it until the regulated charge has been paid

13. The correctness of the copies shall be certified by the Magistrate, if required. All corrections made in a copy should be verified.

14 *Magistrates.*—In Fort Courts, the Chief Magistrate will, on Wednesdays and Fridays, hear summons cases, and the Junior Magistrate will hear them on Tuesdays and Thursdays. The Magistrate of the Girgaon Court will hear such cases daily.

15. It shall be the duty of each Junior Magistrate to inform the Chief Magistrate of any stress of business in his Court, and thereupon the Chief Magistrate shall provide for such distribution or transfer of cases amongst the three Magistrates as will make it impossible for the disposal of any one case to be unduly delayed by stress of work in a particular case.

16. Each Magistrate shall keep in prescribed form a return of all warrant and complaint cases which have been adjourned more than thrice, showing in each case the alleged facts of the charge; the way in which the first appearance of the accused is obtained,—*i.e*, by summons or warrant, the way in which the subsequent appearance of the accused was secured,—*i.e*, by custody or bail, and in case of inability to give bail, the amount of bail demanded, the adjournments of the case; the reason for such adjournments and the final order for its disposal.

17. The Junior Magistrate shall submit such returns to the Chief Magistrate every week.

18. The Chief Magistrate shall, whenever he thinks proper, send for the record of any case decided by either of the Junior Magistrates.—*Bombay Gazette*, 1881, p 9.

The following rules are in force in the Court of the Presidency Magistrates at Calcutta.

1. The Honorary Presidency Magistrates shall sit in the rotation arranged by the Chief Magistrate.

2 The Honorary Presidency Magistrates shall try only such cases as may be referred to them by the Chief Magistrate or by his orders.

3. The Honorary Presidency Magistrates shall ordinarily open their Courts at noon, and rise at 5 P.M. on the dates fixed by the Chief Magistrate. A special bench may however, be convened on any other day or any other hour by the Chief Magistrate.

4 A Bench shall ordinarily be composed of not less than three Magistrates, when they are all Honorary Magistrates, or of two when one of them is a Stipendiary, but the Chief Magistrate may, in his discretion, permit any two Honorary Presidency Magistrates to proceed with the hearing and disposal of cases.

5 The Chief Magistrate may, should he deem it desirable, appoint any Honorary Presidency Magistrate sitting singly to be a Court, and on business being sent to him by the Chief Magistrate, he shall dispose of the same, but not otherwise.

6. Should any Honorary Presidency Magistrate named for attendance on a Bench fail to be present on the appointed day, the Chief Magistrate may, in his discretion, either summon another Magistrate, or direct that the Bench should proceed without the absent member.

7. The Stipendiary Magistrates shall be *ex-officio* members of Benches; the Chief Magistrate shall, if present, officiate as Chairman; in his absence, the Junior Stipendiary Magistrate shall if sitting officiate as Chairman. In the absence of both the Stipendiary Magistrates, the Chief Magistrate shall nominate the Chairman.

8. The Chairman shall conduct the proceedings of the Court and exercise all the functions in that behalf usually exercised by a Stipendiary Magistrate when sitting singly. He will decide upon the admissibility of evidence, and maintain order in the Court, but it shall be open to any member of the Bench to put questions to the witnesses either direct or through the Chairman as the latter may deem advisable and to suggest any matter for the Chairman's consideration.

9. Every member of a Bench shall have a voice in the finding and sentence. In a Bench consisting of three members, the opinion of the majority shall prevail; when there are only two members, the Chairman shall have a casting vote.

10. The Chairman shall himself ordinarily record the evidence and judgment in cases where a record of evidence and judgment is necessary; but such duty may, with his consent, be performed by any of his colleagues, or the evidence and judgment may be taken down by the Registrar of the Court at the dictation of the Chairman.

11. A Bench may hold one or more adjourned sittings, should it be necessary to do so for the disposal of business or of part-heard cases; but it shall be open to a Bench at the close of each sitting either to refer unheard cases back to the Chief Magistrate for disposal, or to postpone them to some other day as may be most convenient, but adjournments should be, as far as possible, *de die in diem*.

12. Any part-heard case adjourned by a Bench composed of three Magistrates may be proceeded with on the day fixed for the adjourned hearing before any two of the said Magistrates; provided always that the accused person or persons give his or their consent. All subsequent hearings of the case, where further adjournments are necessary, shall be before the same two Magistrates.

13. Any part-heard case may be sent back to the Chief Magistrate for disposal, should it appear unsuited for trial by a Bench.—*Calcutta Gazette* of the 4th July 1881, Part I, p. 148.

E.—Justices of the Peace.

Justices of the Peace for the mofussal.

22. The Governor-General in Council, so far as regards the whole or any part of British India outside the Presidency-towns, and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

This section is taken from Act II of 1869, s. 3.

Under s. 443 no Magistrate, unless he is a Justice of the Peace, and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject shall inquire into or try any charge against a European British subject; and under s. 444 no Judge presiding in a Court of Session except the Sessions Judge shall exercise jurisdiction over a European British subject unless he himself is an European British subject, and if he is an Assistant Sessions Judge unless he has held the office for at least three years and has been specially empowered in this behalf by the Local Government. But under s. 445 any Magistrate may take cognizance of an offence committed by a European British subject in any case in which he could take cognizance of a like offence if committed by any other person provided that if he issues process for compelling his appearance, such process must be returnable before a Magistrate duly qualified to enquire into and try the case.

District Magistrates are *ex-officio* Justices of the Peace whether European British subjects or not.—Sec. 25, *post*.

Justices of the Peace for the Presidency-towns.

23. The Governor-General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor-General in Council or Local Government (as the case may be) thinks fit.

See Act II of 1869, s. 4.

Present Justices of the Peace

24. Every person now acting as a Justice of the Peace within and for, any part of British India other than the said towns under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

See Act II of 1869, s. 10.

Ex-officio Justices of the Peace

25. In virtue of their respective offices, the Governor-General, the Ordinary Members of the Council of the Governor-General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, ["Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving,"—Act III of 1884, sec. 1], and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

See 13 Geo. III, s. 63, s. 38; Act X of 1875, s. 152; Act IV of 1877, s. 8, and ss. 443, 444 and 445, *post*.

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

The word 'removed' is a technical term implying dismissal from the Bench, and does not include such administrative measures as removals or transfers of officers from one place to another. —*Madras Notification*, 10*th August* 1874.

Suspension and removal of Justices of the Peace

27. The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second Schedule to be triable.

As to other provisions of this Code, see ss. 193, 194, &c., *infra*. See *Emp.* v. *Kharga*, I. L. R. 8 All. 665.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

Offences under other laws

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code : Provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years ;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years ; and

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Compare s. 8, para. 1, of Act X of 1872. The clause forbidding Magistrates of the first class to try offences under special or local laws which are punishable with imprisonment for a term which may exceed seven years, is new. Such grave offences should be tried by a higher Court.

As to whether the offences here mentioned are bailable or not, or whether the offenders may be arrested without warrant or not, see Schedule II, "Offences against other Laws."

Under s 184 *post*, offences against Railway, Telegraph, Post Office, Arms and Ammunition Acts are made triable in Presidency towns whether the offence is stated to have been committed there or not.

No Magistrate other than a Presidency Magistrate, or than a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under the Indian Railway Act 1890,—Act IX of 1890, s 133

Offences punishable under the Indian Registration Act III of 1877 (amended by Act XII of 1879, s. 109), are triable by any Court or officer exercising powers not less than those of a Magistrate of the second class—s 83 See *Emp* v *Krishna*, I. L R 7 Mad 347

Under Act X of 1872 it was held, that s. 8, cl 2, ousted the jurisdiction of a second class Magistrate to try an offence punishable under s 80 of the Registration Act (VIII of 1861).—*Mad H. C. Pro., 20th March*, 1876 See, as to the effect of s. 8 of Act X of 1872 with regard to jurisdiction, *Emp.* v. *Achi*, I. L. R 2 Mad. 161.

30. In the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

Offences not punishable with death

This section corresponds with the first part of s. 36 of Act X of 1872. The provisions of that section as to sentences are incorporated in s. 34, *post*, and those as to confirmation, &c., of sentences, in s. 380, para. 1.

An officer invested with powers under this section is competent to pass a sentence of transportation for seven years instead of awarding a sentence of imprisonment.—*In re Boodhooa*, 9 W R. (F B.) Cr. 6 See *Bahadur*, Punj. Rec p 23. He cannot try an offence punishable with death.—*Emp.* v. *Gurdit Sing*, Punj Rec. 1891, p. 8.

The powers under this section are vested in the Deputy Commissioners of the following districts *viz.*—Darjeeling, Julpigori, Cachar, Sonthal Pergunnahs, Hazareebagh, Lohardugga, Singbhoom, Maunbhoom, Goalpara, Kamroop, Durrung, Nowgong, Seebsaugur and Luckimpore.—*Calcutta Gazette*, 1873, p 67

All Deputy Commissioners in the Districts of the Jhansie Division were invested with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or any combination of those punishments authorized by law.—*N. W. P. Gazette*, 1873, p 3.

As to Oudh, see *Oudh Gazette*, 1873, p 1.

In Districts of the Punjab where Reg. IV of 1887 (Frontier Crimes) is in force the Local Government may appoint an additional Magistrate whose procedure in certain respects is regulated by that Regulation.—See ss 5, 6 & 7.

APPEAL.—See s. 408, *post*. It has been held that "District Magistrate," in that section, includes a District Magistrate empowered under this section.—*Rongai* v *Emp*, I. L. R 9 Cal. 513, 516. (S C.) 12 C. L R. 500.

In the case of *Emp* v. *Paramanund*, 13 C. L R 375 (S. C) I L. R 10 Cal. 85, where a Deputy Commissioner, specially empowered under this section, proceeded to try a charge, under

s. 304 of the Indian Penal Code, of culpable homicide not amounting to murder, there being some evidence which would, if believed, have supported a charge of murder, but which the Court did not consider sufficiently strong to warrant such a charge, the Sessions Judge, to whom the sentence was submitted for confirmation, referred the matter to the High Court to have the sentence set aside, and the Deputy Commissioner directed to commit the case to the Sessions. The High Court held that, having regard to the provisions of s. 209, *post*, which empowers a Magistrate holding an inquiry to try the case himself if he thinks that only an offence within his jurisdiction has been committed, it was not possible to say that the Court had acted without jurisdiction, merely because there was some evidence which, if believed, would substantiate a charge of murder. Where there is such evidence, however, an officer empowered under this section incurs a grave responsibility if he tries the case himself. See notes to s. 294, *post*.

A District Magistrate empowered under this section, in trying a case which but for his special powers he would be bound to commit to the Court of Sessions, should be guided by the procedure laid down in Chap. XXI, *post*.

B.—Sentences which may be passed by Courts of various classes.

31. A High Court may pass any sentence authorized by law.

Sentences which High Courts and Sessions Judges may pass

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding *four* [Act X of 1886, s. 1] years *and any sentence of transportation* [Act X of 1886, s. 1] passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

The second paragraph of this section is taken from s. 15, para. 1, and s. 17 of Act X of 1872. A similar provision as to confirmation of a sentence of death was contained in s. 196 of the same Act. As to the last clause, see s. 18 of Act X of 1872.

A Joint Sessions Judge cannot, it has been held in Bombay, exercise the powers of a Sessions Judge under Chap. XXXII, *post*, which deals with Reference and Revision.—*In re Musa Asmal*, I. L. R. 9 Bom 164.

Under s. 59 of the Indian Penal Code, in every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court, which sentences such offender, instead of awarding sentence of imprisonment to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by that Code such offender is liable to imprisonment.

As to appeals from Assistant Sessions Judges and from Courts of Session, see ss. 408, 410, *infra*, and *Rongai v. Emp.*, I L. R. 9 Cal. 513. (S. C.) 12 C. L. R 500.

Sentences which Magistrates may pass

32. The Courts of Magistrates may pass the following sentences, namely :—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class :	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law : Fine not exceeding one thousand rupees ; Whipping.
(*b*) Courts of Magistrates of the second class :	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ; Fine not exceeding two hundred rupees ; Whipping.
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month ; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

'Imprisonment' means imprisonment of either description as defined in the Indian Penal Code, Act XLV of 1860—General Clauses Act I of 1868, s. 2, cl. 18. It is of two kinds: rigorous, that is to say, with hard labour; and simple. See s. 53 of the Penal Code.

Upper Burmah:—As to persons who may pass a sentence of whipping, see Reg. V of 1892, Sched. (IV) set out in Appendix.

As to the execution of the punishment of whipping see ss. 390—396, *post*, and the Whipping Act, VI of 1864.

A person appointed a Magistrate of the second class under Act X of 1872 is incompetent, notwithstanding s. 2 of this Act, to pass a sentence of whipping unless he has been specially empowered to do so under this section (32).—*Emp.* v. *Bhagvanti Ranji*, I. L. R. 7 Bom. 303.

Solitary Confinement.—The Penal Code contains the following provisions:

Section 73.—Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

A time not exceeding one month, if the term of imprisonment shall not exceed six months;

A time not exceeding two months, if the term of imprisonment shall exceed six months, and be less than a year.

A time not exceeding three months, if the term of the imprisonment shall exceed one year.

Section 74.—In executing a sentence of solitary confinement such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such period.

In cases of simple imprisonment ordered as a process for enforcing the payment of a fine, the general rules of ss. 32 and 33 are applicable. The principle of s. 67 of the Penal Code, as amended by Act VIII of 1882, is unaffected by Chap. XXII, *post*, of this Code. See *Emp.* v. *Ashgar Ali*, I. L. R. 6 All. 61.

It is not illegal, it has been held, to impose solitary confinement in summary trials under Chap. XXII. Section 262, *post*, only limits the imprisonment to a term of three months. It does not interfere with a Court's powers under s. 73 of the Penal Code to order solitary confinement, or with the similar powers given by s. 32 (*a*) of this Code.—*Emp.* v. *Annu Khan*, I. L. R. 6. All. 83.

Power of Magistrates to sentence to imprisonment in default of fine:

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code:

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Section 64 of the Indian Penal Code, as amended by Act VIII of 1882, s 2, provides, that in every case of an offence punishable with imprisonment as well as fine in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct, by the sentence, that, in default of fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of sentence; and section 65 of the same Code provides, that the term for which the Court directs the offender to be imprisoned shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine. If the offence be punishable with fine only (the imprisonment which the Court imposes in default of payment of the fine shall be simple under Act VIII of 1882, s. 3), the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, —that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.—S. 67.

Then by the General Clauses Act, I of 1868, s. 5, it is enacted that the provisions of ss 63 to 70, both inclusive, of the Indian Penal Code shall apply to all fines imposed under the authority of any Act thereafter to be passed, unless such shall contain an express provision to the contrary That provise is reproduced in s. I of Act VIII of 1882. Accordingly, when an offence is punishable with imprisonment as well as fine, the imprisonment which can be awarded in default of payment of fine where there is a substantive sentence of imprisonment is, unless the Act creating the offence contains an express provision to the contrary, limited by s. 65 of the Indian Penal Code to one-fourth the maximum fixed for the offence, and further by s. 32 of this Code to one fourth the period of imprisonment which the Magistrate is competent to inflict as a substantive sentence. But where the offence is punishable with fine only, a scale varying with the amount of fine which can be imposed is fixed by s 67 of the Indian Penal Code. The imprisonment under that section must now be simple—Act VIII of 1882, s. 3. See *Emp.* v. *Darba*, I. L. R. 1 All. (F. B.) 461.

Where, however, the offence is punishable with both fine and imprisonment, and the sentence is one of fine only, the imprisonment in default of such fine is limited by ss. 64 and 65 of the Indian Penal Code and the powers of the Magistrate under this section.

"It may be admitted," it was said, "that in some few instances these sections (64, 65 and 67 of the Penal Code as originally enacted) work an anomaly in that when fine alone is imposed as the punishment for an offence punishable with fine or imprisonment, or both, the term of imprisonment to which an offender may be sentenced in default of payment of the fine is less than could be awarded in default of payment of a fine of equal amount imposed for an offence punishable with fine only Thus if for affray, an offence punishable with imprisonment or fine, or both, an offender be sentenced, under s. 160 of the Indian Penal Code, to a fine of Rs. 50, the imprisonment which can be awarded in default is limited to one fourth of a month, while if an owner of land be convicted under s. 154 of the Indian Penal Code for omitting to give information of a riot, an offence punishable with fine only, and be sentenced to pay a fine of Rs. 50 only, he can be sentenced, in default of payment, to imprisonment for two months" (but now, as already stated, such imprisonment can only be simple—Act VIII of 1882, s. 3)—*per* Full Bench.—*Emp.* v. *Darba*, I L. R. 1All. 461.

Transportation cannot be imposed in default of payment of fine.—*Kanhussa* v. *Queen*, I L. R 5 Mad 28.

Where prisoners were convicted of having commited an offence punishable under s. 160 of the Indian Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for thirty days, the full term of imprisonment under the section,—it was held that, having regard to the provisions of s. 309 of Act X of 1872, the sentence was legal. The final clause, however, of that section—which was as follows "Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under this Act"—has been omitted from the present Code. The Court said —"It appears to the High Court, that the proper construction of this clause (the final clause of s. 309) is as follows If imprisonment and fine, and further imprisonment in default of payment of fine is the sentence, the imprisonment in default cannot exceed one fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence, but if the sentence is *fine only*, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence." *Reg.* v. *Muhamad Sahib*, I L. R. 1 Mad. 277. That case has, however, been, though not expressly, overruled *by Emp.* v. *Darba*, I. L. R. 1 All (F. B.) 461 See *Emp.* v. *Venkatsagadu*, I. L. R. 10 Mad. 165. See also *Karm Chand* v. *Emp.*, Punjab Rec., 1885, p. 78.

Where the accused were sentenced by a Presidency Magistrate, under ss. 58 and 74 of the Bengal Excise Act, to a fine of Rs. 200 each, in default to three months' imprisonment, and in addition to six months' imprisonment, which was the maximum term that could be awarded under s. 74,—it was held, that the sentence of imprisonment was not in excess of the powers given to the Magistrate by s. 12 of Act IV of 1877, the imposition of the additional sentence of imprisonment not affecting the Magistrate's power as regarded the original sentence under s. 58.—*Ram Chunder Shaw* v. *Emp.*, I L. R. 6 Cal. 575 (S. C.) 8 C. L R. 250.

The following rules as to the discharge of prisoners confined in default of payment of a fine, on payment of such fine, are in force in the N. W. Provinces —

(1) In all cases in which any offender is sentenced to imprisonment in default of fine, he may pay or cause to be paid to the jailor of the jail in which he shall be so imprisoned the sum mentioned in the warrant of commitment, or any portion thereof, and the jailor shall receive the same, and thereupon discharge such person, or make a deduction from the term of imprisonment proportioned to the amount paid, as the case may be.

(2) The jailor shall certify to the Court from which the warrant issued all payments of fines, and shall remit to the Court all sums received in payment of fines, and on full execution of the sentence he shall return the warrant to the Court as directed by law.—*N. W. P. Gazette*, 1878, p 570.

Where a prisoner was sentenced to imprisonment and fine, and in default of payment of the latter to a further term of imprisonment, and paid a portion of the fine, but, that fact not having been communicated to the jailor, underwent the entire further term of imprisonment,—it was held that, under these circumstances, the Court had no power to order the fine to be refunded.—*Reg.* v. *Natha Mala*, 4 Bom. H C. R , Cr. Cas , 37.

Sections 69 and 70 of the Penal Code provide —If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy five rupees of the fine be paid or levied before the expiration of one

month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.—S 69.

The fine or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period, and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.—S 70

In cases of simple imprisonment ordered as a process for enforcing the payment of a fine, the general rules of ss 32 and 33 are applicable and the principle of s 67 of the Penal Code as amended by Act VIII of 1882, is unaffected by Chap. XXII, *post*, of this Code. See *Emp.* v. *Asghar Ali*, I. L. R. 6 All. 61.

It is not illegal, it has been held, to impose solitary confinement in summary trials under Chap. XXII. Section 262 *post*, only limits the imprisonment to a term of three months. It does not interfere with a Court's powers under s 73 of the Penal Code to order solitary confinement, or with the similar powers given by s. 32 (*a*) of this Code.—*Emp.* v. *Annu Khan*, I. L. R. 6 All. 83.

Higher powers of certain District Magistrate

34 The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge. [Act X of 1886, s. 2.]

As to powers of District Magistrates in case of proceedings against European British subjects, see ss. 443, 444 and 446, *post*, as amended by ss 3, 4 and 5 of Act III of 1884. Section 380, *post*, deals with the powers of a Sessions Judge to whom a sentence is submitted for confirmation.

As to appeals, see s. 408, *post*.

When a Deputy Commissioner's order requires the sanction of the Sessions Judge, the High Court has no jurisdiction to entertain an appeal from it until it is sanctioned—*Reg.* v. *Sham Soonder Dass*, 25 W. R. Cr. 18

The latter part of this section refers to cases in which the sentence of imprisonment is a sentence of upwards of four years without reference to any additional sentence as to fine or whipping.—*In re Shumsher Khan*, I. L. R. 6 Cal 624. See *Emp* v. *Chettu*, Punjab Rec., 1889, p 56.

In the case of *Emp.* v. *Parmanund*, 13 C. L. R. 375 (S. C.) I. L. R. 10 Cal 85, where a Deputy Commissioner specially empowered under this section proceeded to try a charge, under s 304 of the Indian Penal Code, of culpable homicide not amounting to murder, there being some evidence which would, if believed, have supported a charge of murder, but which the Court did not consider sufficiently strong to warrant such a charge, the Sessions Judge, to whom the sentence was submitted for confirmation, referred the matter to the High Court to have the sentence set aside and the Deputy Commissioner directed to commit the case to the Sessions. The High Court held that, having regard to the provisions of s. 209, *post*, which empowers a Magistrate holding an enquiry to try the case himself if he thinks that only an offence within his jurisdiction has been committed, it was impossible to say that the Court had acted without jurisdiction, merely because there was some evidence which, if believed, would substantiate a charge of murder. Where there is such evidence, however, an officer empowered under this section incurs a grave responsibility if he tries the case himself. See notes to s 204, *post*.

Confirmation by an additional Sessions Judge is not within the terms of the section.—*Hunar* v. *Emp*, Punjab Rec., 1884, p 98.

Under Punjab Reg IV of 1887, Frontier Crimes, s. 7 (1), a sentence passed by a District Magistrate or additional District Magistrate in cases not punishable with death are not subject to confirmation.

Sentence in cases of conviction of several offences at one trial

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows :—

Maximum term of punishment.

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years ;

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregated sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

This section corresponds, with some slight verbal alterations, with s. 414 of Act X of 1872 (see also Act X of 1875, s. 109, and Act IV of 1877, s. 13). The words " in such order as the Court may direct " at the end of the first paragraph, are new.

The last clause as to appeal is taken from the judgment of the Bombay High Court in the case of *Reg.* v. *Rama Bhitogowda*, I. L. R. 1 Bom. 222 : cf. *Reg.* v. *Gulam Abbas*, 12 Bom. H. C. R. 147, a case decided under s. 403 of Act X of 1872 : and *Emp.* v. *Haradhone Tamuli*, 3 C. L. R. 511.

Splitting Offences :— A Magistrate is not entitled to split up an offence for the purpose of giving himself jurisdiction over the parts which he would not have had over the whole, and thus deprive the prisoner of an appeal.—*Emp.* v. *Abdul Karim*, I. L. R. 4 Cal. 18.

Section 71 of the Indian Penal Code (Act XLV of 1860), as amended by Act VIII of 1882, s. 4, provides, that where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of his offences, unless it be so expressly provided ; that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or when several acts of which one or more than one would by itself or themselves constitute an offence constitute when combined a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. See *Reg.* v. *Abdool Azeez*, 7 W. R. Cr. 59 : *Emp.* v. *Pir Mahomed*, I. L. R. 10 Bom. 254.

The direction that a sentence of imprisonment in one case is to run from the date of the expiration of the sentence in a previous case should appear in the body of the sentence, and should also be inserted in the warrant.—*Mad. H. C. Pro.*, 23rd *December* 1873 : *Weir*, p. 10.

This section, like s. 314 of Act X of 1872, does not embrace the case of separate trials held on the same day for separate offences committed by the same person, but has reference only to the conviction of the accused person of two or more offences at *one* trial.—*Mad. H. C. Pro.*, *5th June* 1879.

Where a person who has been 'previously convicted' is convicted at one time of two or more offences, he may be punished with one, but only one, whipping in addition to any other punishment to which under this section he may be liable.—*Nassir* v. *Chunder*, 9 W. R. Cr. 41. But where a person who has been 'previously convicted' is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences in addition to imprisonment or fine for the other or others ; but it is not illegal to sentence him to one whipping in lieu of all other punishments.—*Ibid.* See also *Rutton Bewa* v. *Buhur*, 14 W. R. Cr. 7, and *Reg.* v. *Kautiram and Meekeer*, 1 W. R. Cr. 24.

Where a person is convicted in two cases by two different tribunals, and on appeal the conviction in the first case is set aside, the imprisonment undergone should be reckoned as imprisonment under the sentence passed on the second conviction.—*Mad. H. C. Pro.*, *15th February* 1879.

It should be borne in mind that, under s. 233, for every distinct offence of which any person is accused, there must be a separate charge, and every such charge must be tried separately except in the cases mentioned in ss. 234, 235, 236 and 239. See the notes to s. 233 and to the sections referred to therein.

Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him, in respect of such offence, is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict.—*In re Dadlettu*, I. L. R. 3 All. 305 (Full Bench). There a person accused of theft on the 1st August, and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. The Full Bench held, that the joinder of the charges was regular under s. 233 of Act X of 1872 (s. 234 of this Code), and that the punishment was within the limits prescribed by s. 314.

In Calcutta in a recent case it has been held by a Full Bench (TOTTENHAM J., dissenting) overruling *Lokenath Sircar* v. *Emp.*, I. L. R. 11 Cal. 349, that separate sentences passed upon persons for the offences of rioting and grievous hurt are not legal when it is found that such persons individually did not commit any act which amounted to voluntarily causing grievous hurt, but were guilty of that offence only under s. 149 of the Penal Code.—*Nilmoney Poddar* v. *Emp.*, I. L. R. 16 Cal. 442 (F. B.)—See *Reg.* v. *Durzoolla*, 9 W. R. Cr. 33 : *Queen* v. *Dina Sheikh*, 10 W. R. Cr. 63 : *Queen* v. *Shahabut Sheikh*, 13 W. R. Cr. 42 : and *Emp.* v. *Jubdar Kazi*, I. L. R. 6 Cal. 718 : (S. C.) 8 C. L. R. 390.

In *Emp.* v. *Ram Partab*, I. L. R. 6 All. 121, STRAIGHT, J., had come to a similar decision, but that was dissented from by BRODHURST, J., in *Emp.* v. *Dungar Singh*, I. L. R. 7 All. 29 ; by EDGE, C. J., and BRODHURST, J., in *Emp.* v. *Bisheshur*, I. L. R. 9 All. 645, and by MAHMOOD, J., in *Emp.* v. *Wasir Jan*, I. L. R. 10 All. 58. Subsequently STRAIGHT and BRODHURST, JJ., held that under ss. 35 and 235 of the Code of Criminal Procedure a Magistrate might legally pass

a separate sentence of 2 years' rigorous imprisonment and fine under each of the ss. 379 or 380 and 554 of the Penal Code for house-breaking in order to the commission of theft and theft, the two offences forming part of the same transaction and being tried together.—*Emp.* v. *Zor Singh*, I. L. R. 10 All. 146.

In Madras sentences under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault) and also under sections 426 and 352 for the offences of mischief and assault, the offences forming one transaction were held to be legal.—*Emp.* v. *Nirichan*, I. L. R. 12 Mad. 36.

So in Bombay sentences for house-breaking by night with intent to commit theft and for theft in a dwelling-house—the two offences being part of the same transaction—were held to be legal.—*Emp.* v. *Sukharam Bhau*, I. L. R. 10 Bom. 493.

A conviction under the Indian Penal Code, and also under a special law, is illegal.—*Reg.* v. *Hussain Ali*, 5 All. H. C. R. 49.

It is an irregularity on the part of an Assistant Judge not to pass a separate sentence for each offence of which a prisoner has been found guilty, but it is not in itself an error of defect in consequence of which the High Court can reverse or alter the sentence.—*Reg.* v. *Vinayek Trimbak*, 2 Bom. H. C. R. 414 : *Reg.* v. *Murar Trikam*, 5 Bom. H. C. R. Cr. 3 : *Emp.* v. *Wuzir Jan*, I. L. R. 10 All. 58.

A person convicted of an offence after a previous conviction is not convicted of distinct offences within the meaning of the section.—*Emp.* v. *Khulak*, I. L. R. 11 All. 393.

Under this section sentences of imprisonment cannot be passed so as to run concurrently.—*Emp.* v. *Wuzir Jan*, I. L. R. 10 All. 58.—*Emp.* v. *Pir Mahomed*, I. L. R. 10 Bom. 254.

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Subdivisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third Schedule. Such powers are called their "ordinary powers."

The ordinary powers of Magistrates of all classes were described in ss. 22, 24, 26, 28 and 30 of Act X of 1872. These powers are now specified in Schedule III of this Code.

As to powers of Magistrates in Upper Burmah see Reg. VII of 1886, Schedules VI and XXII.

Criminal cases in the Punjab against European or Native soldiers can only be taken up by Magistrates of the first class.—*Punjab Gazette*, 1880, *Part III*, p. 77.

Upper Burmah :—For powers of Magistrates in Upper Burmah (except the Shan States) See Reg. V of 1892, Sched. (IV) set out in Appendix.

Additional powers conferrible on Magistrates.

37. In addition to his ordinary powers any Subdivisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth Schedule as powers with which he may be invested by the Local Government or the District Magistrate.

The power of the Local Government to invest Magistrates of the first, second, or third class with special powers was conferred by ss. 23, 25, 27 and 29 of Act X of 1872. The additional powers with which Mofussil Magistrates may be invested are now specified in Schedule IV to the Code.

In the Punjab, Magistrates conferring powers on their subordinates should report to the Chief Court.—*Punjab Gazette*, 1873, p. 75.

Under the authority vested in him by s. 29 of Act X of 1872, the Governor of Madras was pleased to confer on every Magistrate of a district, exercising the powers of a Magistrate of the first class, the power of summary trials which was vested in the Magistrate of the District by s. 222 (s. 263 of this Code) of the same Act.—*Madras Gazette*, 1874, p. 1182.

As to power of the Local Government to confer magisterial powers on Police-officers in the Salween and Arakan Hill Districts, see Act XI of 1889, s. 101.

Upper Burmah :—For powers of Magistrates in Upper Burmah (except the Shan States) See Reg. V of 1892, Sched. (IV) set out in Appendix.

Control of District Magistrates' investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised, subject to the control of the Local Government.

D.—Conferment, Continuance, and Cancellation of Powers.

Mode of conferring powers.

39. In conferring powers under this Code, the Local Government may by order empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

The first paragraph of this section corresponds with s. 43 of Act X of 1872. The last paragraph is new. See *In re Mahomed Ishak*, I. L. R. 6 Cal. 476.

The persons holding the office of Cantonment Magistrate at Mhow, Morar, Nowgong and Neemuch were, under s. 43 of Act X of 1872, invested with the powers of a Magistrate of the District within the limits of their respective Cantonments —*Gazette of India*, 1875, p. 198.

On the 8th August 1884, a Magistrate of the second class began an enquiry in a case in which several persons were accused of rioting and of voluntarily causing grievous hurt. On the 6th September, the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, held that the sentences passed by the Magistrate were illegal as being inconsistent with the provisions of s. 71 of the Penal Code, paragraphs 2 and 4; and he accordingly reduced the sentences of imprisonment, which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under s. 143. It was held by the Full Bench (PETHERAM, C. J., and BRODHURST, J., dissenting) that the sentences passed by the Magistrate were legal.

OLDFIELD, MAHMOOD, and DUTHOIT JJ., held that, with reference to the terms of s. 30 of the Criminal Procedure Code, a Magistrate of the second class who had begun a trial as such and continued it in the same capacity up to the passing of sentence, and who, prior to passing sentence, had been invested with the powers of a Magistrate of the first class, was competent to pass sentence in the case as a Magistrate of the first class; while PETHERAM, C. J., considered that a case must be taken to be tried upon the day the trial commences; that, for all the purposes of the trial, the Magistrate in this case retained the *status* of a Magistrate of the second class: and that he was therefore not competent to pass sentence as a Magistrate of the first class.—*Emp.* v. *Pershad*, I. L. R 7 All. (F. B.) 414.

Continuance of powers of officers transferred.

40. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Code throughout any local area, is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

This section corresponds with s. 56 of Act X of 1872. The words 'throughout any local area' have been added in order to show that powers conferred by one Local Government do not accompany an officer when he is transferred to a province under another Local Government. This alteration was made in consequence of the decision in the case of *Re Pursooram Borooah*, I. L. R. 2 Cal. 117. There the petitioner had been convicted by Mr. Carnegy, the Assistant Commissioner of Kamroop, in the exercise of a summary jurisdiction under s 222 of Act X of 1872. Mr Carnegy was, in the year 1872, in charge of the Jorehaut Division, in the district of Seebsaugor, 'with first class powers and powers under s. 222 of the Act.' In 1874, he proceeded on furlough to England, and on his return in 1875, was 'posted' to the district of Kamroop, and invested with the powers of a Magistrate of the first class. It was held that s 56 did not apply, and that Mr. Carnegy had no summary jurisdiction in Kamroop See *Bishashar Nath* v. *Emp*, Punjab Rec., 1884, p. 20.

Where a Magistrate was appointed to a certain district, and subsequently was appointed to another district, "on being relieved," and after being relieved, passed sentence in a pending case,—it was held that, as soon as he was relieved, he could exercise no jurisdiction, and his sentence was set aside.—*Emp.* v. *Anand Sarup*, I. L. R 3 All (F. B.) 563.

Where a Sub Registrar invested with magisterial powers with reference to offences under Act XXIV of 1859 was transferred from the place where he was officiating at the time he was so invested to another place and there took on his file and tried certain cases, the High Court declined to quash his proceedings —*Emp.* v. *Viranna*, I. L R 15 Mad. 132.

In the case of *Emp.* v. *Pershad*, I L. R. 7 All. 414, when a Magistrate of the second class had begun a trial and had continued it in the same capacity up to the passing of sentence and prior to passing sentence had been invested with the powers of a Magistrate of the first class, it was held by OLDFIELD, MAHMOOD, and DUTHOIT, JJ., (PETHERAM, C. J., and BRODHURST, J., dissenting) that he was competent to pass sentence in the case as a Magistrate of the first class.

Powers may be cancelled

41. The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

Public when to assist Magistrates and Police.

42. Every person is bound to assist a Magistrate or Police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

(*a*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray.

As to the dispersion of unlawful assemblies, see ss. 127 to 132, *infra*.

Clause (*a*). Under s. 187 of the Indian Penal Code the intentional omission to assist a public servant in the execution of his public duty is punishable with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded for the purpose of executing process, preventing the commission of an offence, suppressing a riot or affray, or of apprehending a person charged with a guilty knowledge of an offence, or of having escaped from lawful custody, the penalties may extend to simple imprisonment for six months, or fine of one hundred rupees, or both.

As to the right of private defence, see Penal Code, s. 99.

Clause (*b*). Whoever knowingly joins, or continues in, an assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of s. 141, the offender will be punishable under s. 145.—*Penal Code, s.* 151.

Clause (*c*). Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.—*Penal Code, s.* 146.

When two or more persons, by fighting in a public place, disturb the public place, they are said to 'commit an affray.'—*Penal Code, s.* 159.

See, as to the liabilities of the owners or occupiers of land, and their agents, on which unlawful assemblies are held or riots committed.—*Penal Code, ss.* 154, 155 and 156.

Where a Magistrate directed a landholder to find a clue in a case of theft within fifteen days and to assist the police, it was held, that the order was not authorized by ss. 90 and 91 of Act X of 1872 (ss. 45 and 42 of this Act.)—*Emp.* v. *Bakshi Ram*, I. L. R. 3 All. 201.

Aid to person other than Police-officer executing warrant.

43. When a warrant is directed to a person other than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant isdirected be near at hand and acting in the execution of the warrant.

This section does not impose any obligation on the public to aid in the execution of a warrant, but indemnifies any person who gives the person executing the warrant any assistance. As to when persons are bound to give assistance to Magistrates and Police, see the preceding section.

A warrant may be directed by a District Magistrate or Subdivisional Magistrate to any landholder, farmer, or manager of land within the district or subdivision.—*S.* 78, *post*.

Where a warrant is directed to any Police-officer, it may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is endorsed or directed.—*S.* 79, *post*.

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which

shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

The offences enumerated in this section are the same as those enumerated in s. 80 of Act X of 1872. That section imposed the obligation of giving information upon persons aware of the commission of the offences specified. This section, it will be seen, goes further, and imposes that obligation on persons aware of the intention to commit any such offences, and the information is to be given 'forthwith.' See also Act IV of 1877, s 40.

The following are the offences of which information must be given :

Offences against the State.

121. Waging or attempting to wage war, or abetting the waging of war, against the Queen.
121A. Conspiracy to commit offences punishable by the preceding section.
122. Collecting arms, etc., with the intention of waging war against the Queen.
123. Concealing with intent to facilitate a design to wage war.
124. Assaulting the Governor General, the Governor of any Presidency, a Lieutenant-Governor or a Member of Council, with intent to compel or restrain the exercise of any lawful power.
124A. Exciting disaffection.
125. Waging war against any Asiatic power in alliance with the Queen.
126. Committing depredation in the territories of any power at peace with the Queen.
130. Aiding escape of, or rescuing or harbouring, a prisoner of State or War.

Offences affecting the Human Body.

302. Murder.
303. Murder by a life-convict.
304. Culpable homicide not amounting to murder.

Offences against Property.

382. Theft after preparation made for causing death or hurt, in order to the committing of the theft.
392. Robbery.
393. Attempt to commit robbery.
394. Voluntarily causing hurt in committing robbery.
395. Dacoity.
396. Dacoity with murder.
397. Robbery or dacoity with attempt to cause death or grievous hurt.
398. Attempt to commit robbery or dacoity when armed with deadly weapon.
399. Making preparation to commit dacoity.
402. Assembling for purpose of committing dacoity.
435. Mischief by fire or explosive substance with intent to cause damage to the amount of Rs. 100.
436. Mischief by fire or explosive substance with intent to destroy a house, &c.
449. House-trespass in order to the commission of an offence punishable with death.
450. House-trespass in order to the commission of an offence punishable with transportation for life.
456. Lurking house-trespass or house breaking by night.
457. Lurking house-trespass or house-breaking by night, in order to the commission of an offence punishable with imprisonment.
458. Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person.
459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
460. Being jointly concerned in committing lurking house-trespass by night, or house-breaking in the course of the commission of which offence death or grievous hurt is caused or attempted.

Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.—*Indian Penal Code, s.* 154.

Under s. 176 of the Indian Penal Code, the omission to give notice or information to a public servant by a person legally bound to give notice or information is punishable. So the intentional omission to give information of an offence, by a person bound to give such information, is punishable under s. 202.

As to what is an offence, see s. 40 of the Penal Code as amended by Act XXVII of 1870 and by Act X of 1886.

Village headmen, landholders and others bound to report certain matters.

45. Every village headman, village watchman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest

Police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or Police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, or any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

EXPLANATION.—In this section 'village' includes village lands.

This section corresponds substantially with s. 90 of Act X of 1872. The duties imposed by it have been extended to village Police-officers. Further, the section has been extended to escaped convicts or proclaimed offenders, and (to provide for villages in hill passes through which bands of dacoits habitually proceed) also to cases where the criminal merely goes through the village.

Upper Burmah.—In Upper Burmah by s. 4 of Reg. XIV of 1887 the following is substituted for s. 45 of the Criminal Procedure Code:—

"45. A headman appointed under the Upper Burmah Village Regulation 1887 shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest Police-station or military post whichever is the nearer any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in his village;

(*b*) the resort to any place within, or the passage through, his village of any person whom he knows or reasonably suspects to be a dacoit robber, escaped convict or proclaimed offender;

(*c*) the commission of or attempt or intention to commit within his village any of the following offences, namely:—

(*i*) Murder.
(*ii*) Culpable homicide not amounting to murder.
(*iii*) Dacoity.
(*iv*) Robbery.
(*v*) Offence against the Indian Arms Act, 1878, and
(*vi*) Any other offence respecting which the Deputy Commissioner by general or special order made with the previous sanction of the Commissioner directs him to communicate information:

(*d*) the occurrence in his village of any sudden or unnatural death or of any death under suspicious circumstances.

Explanation.—In this section "village" has the meaning assigned to the word in the Upper Burma Village Regulation, 1887."

Section 5 of the same Regulation lays down the duties of the headmen of villages.

Lower Burmah.—Similar provisions are made for Lower Burmah by ss. 5 and 6 of Act III of 1889.

Residence in a dwelling-house belonging to another is not occupation of land within the meaning of the section.—*In re Mudhoosoodun Chuckerbutty*, 23 W. R. Cr. 60.

The words "owner or occupier of land," it has been held in Madras, do not apply to the owner or occupier of a house in a village.—*Emp.* v. *Achutha*, I. L. R. 12 Mad. 92. Section 90 of Act X of 1872 provided, that "every owner or occupier of land, *or* the agent of any such owner or occupier," should report. The present section, it will be seen, provides that the owner, *&c., and* his agent shall report. This alteration was made in consequence of the doubt raised in the case of *Emp.* v. *Achiraj Lall*, I. L. R. 4 Cal. 603: (S. C.) 3 C. L. R. 87, as to whether an agent was bound to give any information except in the case mentioned in the last clause, *viz.*, of a sudden or unnatural death. This clause has been altered, and information must now be given, not only of sudden or unnatural deaths, but of deaths under suspicious circumstances. The duty of giving such information arises only when the death takes place at or near the village where the person bound to give the information resides.—*In re Mudhoosoodun Chuckerbutty*, 23 W. R. Cr. 60. A 'kranchi' is not an 'agent' within the meaning of this section. A 'dowan' may be an 'agent' if his master is absent; but the provisions of the section do not apply to a dewan who is acting only under the orders of his resident master.—*Emp.* v. *Achiraj Lall*, I. L. R. 4 Cal. 603: (S. C.) 3 C. L. R. 87. And a village accountant and village Munsif's peon do not come within the clauses of persons bound to give information.—*In re Ramunhi Nayar*, I. L. R. 1 Mad. 266.

The liability of the resident agent of an owner arises, when the owner is not resident, and has no personal knowledge of the fact required to be reported. Where the owner has such knowledge, the liability attaches to him.—*In re Mudhoosoodun Chuckerbutty*, 23 W. R. Cr. 60.

In Calcutta and Bombay it has been held that the provisions of the section should not be put in force against one who has omitted to give information to the Police of an offence having been committed in cases where the Police have actually obtained such information from other sources.—*Emp.* v. *Sashi Bhusan Chuckrabutty*, I. L. R. 4 Cal. 623: *In re Pandya*, I. L. R. 7 Mad. 436.

In order to support a conviction for not having given information under this section, it must appear what the offence is as to the commission of which the accused wilfully omitted to give information; that the specified offence was in fact committed by some one; and that the accused knew of its having been committed.—*Reg.* v. *Ahmed Ali*, 22 W. R. Cr. 42.

Section 21 of the Criminal Tribes Act (XXVII of 1871) provides, that it shall be the duty of every village headman and village watchman in a village in which any persons belonging to a tribe, class or gang, which has been declared criminal, reside, and of every owner or occupier of land on which any such persons reside, to give the earliest information in his power at the nearest Police-station of—

(1) the failure of any such person to appear and give information, as directed in section eight;

(2) the departure of any such person from such village, or from such land (as the case may be), and it shall be the duty of every village headman and village watchman in a village, and of every owner or occupier of land, to give the earliest information in his power at the nearest Police-station of the arrival at such village, or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class, or gang.

Section 22 of the same Act makes a person neglecting to give information punishable under s. 176 of the Indian Penal Code.

Section 176 of the Indian Penal Code provides punishment for the intentional omission to give notice or information to a public servant by a person legally bound to give notice or information. Section 177 of the same Code deals with the punishment for knowingly furnishing false information. See *In re Pandya Nayak*, I. L. R. 7 Mad. 436.

In the case of *Matuki Misser* v. *Emp.*, I. L. R. 11 Cal. 619, it was held by PRINSEP and MACPHERSON, JJ., that it was not necessary, in order to support a conviction under s. 176 of the Indian Penal Code against a person falling within the provisions of this section of the Criminal Procedure Code for not giving information of an occurrence falling under cl. (*d*) of that section, to show that the death actually occurred on the land, when the circumstances disclosed showed that a body had been found under circumstances denoting that the death was sudden, unnatural or suspicious, the finding of the body being a fact from which a Court might reasonably infer, in the absence of evidence to the contrary, that the death took place there. MITTER, J., dissented from the judgment of these learned Judges, considering it was necessary to secure a conviction to prove that the death took place or occurred in the village or the land of the accused, and that the finding of a body there did not of itself afford that proof. See *Emp.* v. *Abdul Kadir*, I. L. R. 3 All. 279: *Queen* v. *Hardut Surna*, 8 W. R. Cr. 68.

CHAPTER V.

OF ARREST, ESCAPE, AND RETAKING.*

A.—Arrest generally.

Arrest how made.

46. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

The first paragraph of this section is the same as s. 177 of Act X of 1872. The second corresponds to a certain extent with s. 178 of the same Act. The use of necessary means to effect the arrest has been extended to meet the case of attempts to evade arrest.

Presidency Towns.—In Calcutta the powers of the Police to make arrests and their procedure in making arrests, if the sections in this Chapter other than ss. 54, 55 and 56 do not apply, are regulated by these sections and by the 3rd column of Schedule II of this Code and by Act IV of 1866, as amended by subsequent Acts. Section 13 of that Act provides that every member of the Police force on enrolment shall receive a certificate by virtue of which he shall be vested with the powers, functions and privileges of a constable. The powers, functions and privileges of a constable are not defined, and the words Constable or Police-officer are apparently used as synonymous throughout the Act, see ss. 19, 20 and 21. Section 72, as amended by Act II (Ben.) I of 1886, s. 4, empowers any Police-officer without a warrant to arrest any person committing in his view any of the offences described or referred to in the Act, if the name and address of such person be unknown to such Police

* In the absence of any specific provision to the contrary, nothing in this Code applies to the Police in the towns of Calcutta and Bombay—s. 1, *supra*.

Having regard to the fact that ss. 54, 55 and 56 in the Chapter are made specifically to apply to the Police in these towns, it may well be doubted whether the other sections, which are for the most part directory, apply to the Police there. The 3rd column of Schedule II as to arresting with or without warrant applies to the Police in Calcutta and Bombay.

officer and cannot be ascertained by him then and there. Section 73, which dealt with the power of Police officers to take into custody without warrant persons charged with aggravated assault recently committed, has been repealed by Act IV of 1877. Sections 74—77 deal with the procedure to be followed on making arrests.

Section 54 specifically gives the Police in Calcutta and Bombay power to arrest in certain cases without warrant, but it may be question d whether the Police in those towns have the power which is vested in the Police in the mofussil by s. 48 to break open doors and enter zenanas in order to affect arrests. The Legislature not having, in regard to the Police in Calcutta and Bombay, made provision for the breaking open of doors and entering zenanas, as in the case of the Police elsewhere it may be that the Police in those towns are unrestricted in the exercise of the power which is given to them to arrest without warrant in cognizable cases and with warrant in other cases.

In Madras the Police are regulated by Act VIII (Mad.) of 1867 in Bombay by Act XIII of 1856 as amended by Act XLVIII of 1860 and Bombay Acts I of 1872, II of 1879 and IV of 1882, and under these their powers are practically the same as the powers of the Calcutta Police under Act IV of 1866 as amended by subsequent Acts.

There is no right of private defence against an act, which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done by a public servant or by his direction acting in good faith under colour of his office, though that act may not be strictly justifiable by law; but a person is not deprived of the right of private defence against an act done or attempted to be done by a public servant as such, unless he knows or has reason to believe that the person doing the act is such public servant; nor is he deprived of the right of private defence against an act done or attempted to be done by the direction of a public servant, unless he knows or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, produces such authority, if demanded.—*Penal Code, s* 99.

In making the arrest under a warrant, the Police officer or other person executing the warrant, must notify the substance of the warrant to the person to be arrested, and, if required, must show him the warrant.—S 80, *infra*. See *Emp* v. *Amer Nath*, I. L. R. 5 All 318.

Resistance or obstruction by a person to the lawful apprehension of himself or of another, are punishable under ss 224 and 225 of the Indian Penal Code.

In the case of *Codd* v. *Cabe*, 45 L. J., Mag. Ca 101, L. R., 1 Exch Div. 352, 4 L J 453; 13 Cox, C. C, 202—a warrant had been issued, addressed to all Police officers of Devon for the arrest of C for trespass in pursuit of conies. It was held that C was justified in resisting a constable who attempted to arrest him without having the warrant in his possession, although it was not shown that the production of the warrant was required by C. The case was appealed and it was held that a person against whom a warrant has been issued for an offence less than felony (all Police officers being empowered to arrest without warrant in case of felony), cannot be arrested by a constable who has not the warrant in his possession at the time of the arrest. See *Emp.* v. *Amer Nath* I. L R 5 All 318.

Where a Police officer makes an arrest in a case in which he is not authorized to arrest without a warrant, or where a warrant has been issued and he makes the arrest without having the warrant in his possession (s. 80, *post*), it would seem he might be charged under s. 342 of the Indian Penal Code with wrongful confinement. But see *Reg.* v. *Budrool Hossain*, 24 W R Cr. 51, which, however is a case in which it does not appear from the report whether the person arrested was charged with an offence for which he could not be arrested without a warrant.

Search of place entered by person sought to be arrested

47 If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

As to resistance to lawful authority, see Penal Code, ss. 183, 184, as to obstructing a public servant, ss 186 and 187, as to harbouring an offender, ss. 212 and 216, and as to a person resisting or obstructing the lawful apprehension of himself or of another person, s. 225 of that Code.

Presidency Towns.—See note to preceding section under this heading.

A person, though not a Police officer, having power to arrest and not acting under a warrant, may pursue and arrest a person escaping from legal custody.—*Ss.* 66 and 67, *post*.

Procedure where ingress not obtainable

48. If ingress to such place cannot be obtained under section 47, it shall be lawful, in any case, for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

in order to effect an entrance into such place, to break open any outer inner door or window of any house or place, whether that of the person to be

arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zenana.

The last paragraph as to breaking open a zenana gives more extensive powers than those contained in s. 181 of Act X of 1872, which applied only where the person to be arrested was accused of an offence for which a warrant might issue. See ss. 66 and 67, *post*.

Presidency Towns.—See note to s. 46 under this heading.

The procedure here laid down applies also to search-warrants.—*S.* 102, *post*.

A Police-officer, who knowingly disobeys the directions laid down by this section with intent to cause injury, is liable to punishment under s. 166 of the Penal Code.

49. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors and windows for purposes of liberation.

See ss. 66 and 67, *post*.

Presidency Towns.—See note to s. 46 under this heading.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

Presidency Towns.—See note to s. 46 under this heading.

Every Police-officer, who is guilty of offering any unwarrantable personal violence to any person in his custody, is liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.—*Act V of* 1861, *s.* 29. See *Bussoram Doss*, 19 W. R. Cr. 36, and ss. 62 and 63, *post*.

Whoever, being in any office which gives him legal authority to keep persons in confinement, corruptly or maliciously keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, is punishable with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.—*Indian Penal Code*, *s.* 220.

51. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

Search of arrested persons.

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest, or, when the arrest is made by a private person, the Police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

As to procedure by the Police upon seizure of property taken under this section or stolen, see s. 523, *infra*. As to the custody of offensive weapons, see s. 53. See *Bolaki Lall*, 19 W. R. Cr. 7.

Presidency Towns.—See note to s. 46 under this heading.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Mode of searching women.

Under Act X of 1872, s. 386, the search was directed to be conducted with strict regard to the 'habits and customs of the country.' It will be observed that an apparent alteration has been made in the present Code, and that the search is now to be conducted by a woman 'with strict regard to decency.' Compare also s. 166 of Act IV of 1877.

Presidency Towns.—See note to s. 46 under this heading.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Presidency Towns.—See note to s. 46 under this heading.

B.—Arrest without Warrant.

When Police may arrest without warrant.

54. Any Police-officer may, without an order from a Magistrate and without a warrant, arrest—

first—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly—any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

See s. 87, *post*, as to proclamations.

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property, and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy, *or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service* [*Act XIV of* 1887, s. 78].

This section applies to the Police in the towns of Calcutta and Bombay.

Those provisions correspond substantially with those of s. 92 of Act X of 1872, omitting cl. 3. The power to arrest deserters from the Navy is new. The old Code contained a section (106) authorizing masters and mates to arrest deserters from ships. There is no corresponding section in the present Code, as the matter is sufficiently provided for by the Merchant Shipping Acts.

The Bengal Police Act (V of 1861) provides (s. 34), that it shall be lawful for any Police-officer to take into custody, without a warrant, any person who within his view commits any of the following offences on any road or in any street or thoroughfare within the limits of any town to which the section extends:

First—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.

Second—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

Third—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

Fourth—Any person who exposes any goods for sale.

Fifth—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building material; or who constructs any cowshed, stable, or the like, or who causes any offensive matter to run from any house, factory, dung heap, or the like.

Sixth—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

Seventh—Any person who wilfully and indecently exposes his person, or any offensive deformity, or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Eighth—Any person who neglects to fence in, or duly to protect, any well, tank, or other dangerous place or structure.

By s. 35 of Act XV of 1873, Police-officers in any Municipality in the North-Western Provinces and Oudh, to which the Act has been extended, may exercise the powers given above.

The Criminal Tribes Act (XXVII of 1871) authorizes (s. 20) the arrest, without warrant, of any person registered under the provisions of the Act, who is found in any part of British India beyond the limits prescribed for his residence without such pass as may be required by the rules made under the Act, or in a place or at a time not permitted by the conditions of his pass, who escapes from a reformatory settlement; and s. 26 provides for the arrest, without warrant, of eunuchs under certain circumstances.

Section I of Act III of 1869 (B C) empowers Police officers to arrest without warrant any person committing in his view any offence against Act I of 1869 (*an Act for the Prevention of Cruelty to Animals*)

Presidency Towns —See note to s 46 *supra* under this heading In Calcutta the Police are regulated by Act IV of 1866 as amended by Act IV of 1877 and by Act II (Ben) of 1880 in Bombay by Act XIII of 1856 as amended by Act XLVIII of 1860 and Bombay Acts I of 1872 II of 1879 and IV of 1882 and in Madras by Act (Mad) VIII of 1867

Clause (1) In the case of *Queen* v *Behary Sing* 7 W R Cr 3 the High Court made the following remarks as to the duties of the Police on arresting any person without warrant What is a reasonable complaint or suspicion must depend on the circumstances of each particular case but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not on mere vague surmise or information Still less have the Police any power to arrest persons as they appear sometimes to do merely on the chance of something being hereafter proved against them Any wilful excess by a Police officer of his legal powers of arrest is by s 220 of the Penal Code an offence punishable by imprisonment for seven years

With regard to persons whose evidence is required by a Police officer making an inquiry no power exists to arrest or detain them for a single moment An officer in charge of a Police station may under s 144 of Act XXV of 1861 (with which s 160 of this Code corresponds) by an order in writing require the attendance before him of persons whose evidence is necessary and the person summoned is bound to obey the order, but in no case can the Police officer compel a witness by force to attend before him

Moreover if as is frequently the case a Police officer without arresting a person himself directs some of the neighbours to take charge of him the Police-officer is responsible in the same way as if he had himself made the arrest the person arrested by his order being in law in his custody '

Proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice Knowledge that such commitment is contrary to law is a question of fact and not of law and must be proved to satisfy the requirements of s 220 of the Indian Penal Code —*Reg* v *Narayan Babaji* 9 Bom H C R 349 If a Police officer acts within his legal powers of arrest the arrest is legal however harshly he may behave in the exercise of those powers —*Emp* v *Amarsing Jetha* I L R 10 Bom 506 see *Bhawoo Jivaji* v *Mulji Dayal* I L R 12 Bom 379 In the case of *Budrool Hossein* 24 W R Cr 51 a Sub-Inspector of Police was charged under s 342 of the Indian Penal Code there was no evidence of malice or intention of doing an act of the nature spoken of in ss 339 and 340 and no voluntary obstruction or restraint although there was probably excessive and mistaken exercise of powers not civilly excusable in a Police officer The facts it was held, did not amount to the criminal offence of wrongful restraint

As to pursuing an offender into other jurisdictions see ss 58 and 66 *post*

Reasonable Suspicion —As to what is reasonable suspicion, see *Bhawoo Jivaji* v *Mulji Dayal* I L R 12 Bom 379 *Beckwith* v *Philby* 6 B and C 635

Clause (3) A person may be proclaimed an offender under s 87 *post*

Clause (4) Property the possession whereof has been transferred by theft or by extortion or by robbery and property which has been criminally misappropriated or in respect of which the offence of criminal breach of trust has been committed is designated stolen property But if such property subsquently comes into the possession of a person legally entitled to the possession thereof it then ceases to be stolen property —*Penal Code* s 415

For procedure by Police upon seizure of property taken under s 51 or stolen see ss 523—525 *post*

Clause (4) refers to property which is proved to have been stolen and not to anything which a Police-officer may choose to imagine has been stolen —*Shee Sarun Sahai* v *Mohomed Fozil Khan* 10 W R Cr 20 It is not necessary that a formal complaint should have been made in order to authorize a Police officer to apprehend any person found with stolen property —*Raj* v *Gowree Singh* 8 W R Cr 28

Clause (5 Whoever voluntarily obstructs any public servant in the discharge of his public functions is liable to be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both —*Indian Code* s 186 And whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted or escapes or attempts to escape from any custody in which he is lawfully detained for such offence is liable to be punished with imprisonment of either description for a term which may extend to two years or with fine or with both The punishment is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged or of which he was convicted —*Ibid* 224

If a Police officer is under a *bona fide* belief that he is just fied in detaining property which he suspects to be stolen property he may arrest the person who obstructs him in his endeavour to detain that property —*Bhawoo Jivaji* v *Mulji Dayal* I L R 12 Bom 379

Clause (6) Section 154 of the Army Discipline and Regulation Act Stat 44 and 45 Vict Cap 58 enacts —

With respect to deserters the following provisions shall have effect

(1) Upon reasonable suspicion that a person is a deserter it shall be lawful for any constable or if no constable can be immediately met with then for any officer or soldier or other person to apprehend such suspected person and forthwith to bring him before a Court of summary jurisdiction

(2) Where a person is brought before a Court of summary jurisdiction charged with being a deserter under the Act such Court may deal with the case in like manner as if such person were brought before the Court charged with an indictable offence or in Scotland an offence

"(3). The Court, if satisfied either by evidence on oath or by the confession of such person that he is a deserter, shall forthwith, as it may seem to the Court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as the Court may deem most expedient or until he can be so delivered, to be committed to some prison, Police station or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the Court reasonably necessary for the purpose of delivering him into military custody

"(4). Where the person confesses himself to be a deserter, and evidence of the truth or falsehood of such confession is not then forthcoming, the Court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the Court shall transmit, if sitting in the United Kingdom, to a Secretary of State, and if in India, to the General or other Officer commanding the forces in the military district or station where the Court sits, and if in a colony, to the General or other Officer commanding the forces in that colony, a return containing such particulars and being in such form as is specified in the Fifth Schedule to this Act, or as may be from time to time directed by a Secretary of State

"(5). The Court may from time to time remand the said person for a period not exceeding eight days in each instance, and not exceeding in the whole such period as appears to the Court reasonably necessary for the purpose of obtaining the said information

"(6). Where the Court causes a person either to be delivered into military custody or to be committed as a deserter, the Court shall send, if in the United Kingdom, to a Secretary of State, and if in India or a colony, to the General or other Officer commanding as aforesaid, a descriptive return in relation to such deserter, for which the Clerk of the Court shall be entitled to a fee of two shillings

"(7). A Secretary of State shall direct payment of the said fee"—*Vide G. O. No. 4707 J., 28th November* 1881.

The Indian Articles of War (Act V. of 1869) provide that a deserter when arrested should be brought before the nearest Magistrate or the nearest Military Commanding Officer, when no Magistrate is accessible, to be dealt with according to law.

A village chaukidar is not a Police officer within the meaning of the section.—*Emp.* v. *Kallu*, I. L. R 3 All 60.

The Police of *all grades* may arrest without warrant any person in possession of contraband salt (s 24, Act VII of 1864, Mad Act I of 1882, s. 4); any one carrying any excisable articles liable to confiscation (Excise Act), all native officers and sepoys, excepting subadars, jemadars, and sarangs, wearing their uniform coats when not employed on the public service (s 30, Reg XX of 1817; see also s. 143, Penal Code); any person who commits any offence made punishable by fine under the Railway Act, if his name and address be unknown, or he is likely to abscond (s 132, Act IX of 1890); any person who shall be guilty of any offence mentioned in ss 100, 101, 119, 120, 121, 126, 127, 128, or 129, or in section 130 subs (1) of the Railway Act (s. 131, Act IX of 1890). See *Bengal Police Manual*, 32, any person found gambling, &c, in public streets (Act 11 (B C.) of 1867, s 11), any person carrying arms &c., under suspicious circumstances (Arms Act, XI of 1878, s. 12); persons committing an offence contrary to ss. 14 or 16 of the Cantonments Act, III of 1880, s. 17, any person committing in presence of Police-officer, or accused of committing a non cognizable offence, refusing to give his name and address.—S. 57, *post*.

In provinces where the Inland Emigration Act, I of 1882, is in force, if any labourer deserts from his employer's service, such employer, or any person acting on his behalf, may, without a warrant and without the assistance of any Police officer, arrest such labourer wherever he may be found. Provided that, if such labourer be found within five miles of the place where a Magistrate resides, or in the service of another employer, he shall not be arrested without warrant. Every Police officer shall assist in arresting any such labourer if so required by the employer or person acting on his behalf. Whoever arrests a labourer under this section, shall without delay take him to the Police-station nearest to the place of the arrest, and if he fails to do so, shall be punished with fine which may extend to two hundred rupees.

55. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

Arrest of vagabonds, habitual robbers, &c

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or, in order to the committing of extortion, habitually puts or attempts to put persons in fear of injury.

"This section applies to the police in the towns of Calcutta and Bombay." —[Act X of 1886, s. 3.]

Compare s. 94 of Act X of 1872.

Clause (*a*). Under the old Code, any person found 'lurking' within the limits of the Police-station might be arrested. It will now be necessary, in order to justify the arrest, to show that the

person arrested intended to commit a 'cognizable offence' See s 4, cl (*g*) for the definition of 'cognizable offence'

Upper Burmah —As to powers of certain Police officers to act under this section, see Reg V of 1892, Sched (VI)

As to requiring security for good behaviour from the persons mentioned in cls (*a*) and (*b*), see s 109 *post* and as to security from the persons mentioned in cl (*c*) see s 110 See further, ss 112 and 118 *post* and *Queen* v *Syud Hossain Ali Chowdhry* 8 W R Cr 74

In the case of *Dantu Singh* I L R 14 All 45 it was said that when a person is arrested by the police under this section (55) he should always be given the option of release on reasonable bail being given

It is the duty of every Darogah or District Police officer to apprehend and send to the Magistrate all persons found wandering at large within his district who are deemed to be lunatics and all persons who are deemed to be dangerous by reason of lunacy —*Act XXXVI of* 1858 s 4

Under the European Vagrancy Act IX of 1874, s 4 "vagrant" means a person of European extraction found asking for alms or wandering about without any employment or visible means of subsistence The expression "person of European extraction" includes for the purposes of the Act and those rules (1) persons born in Europe, America, the West Indies, Australia and New Zealand, and (2) the legitimate son of a father and grandson of a grandfather so born —*Rule 1 under Act IX of* 1874

Any Police officer may within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other Police officer to, and to appear before the nearest Magistrate of Police and may *without those limits* require any such person to accompany him or any other Police officer to, and to appear before the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure —*Act IX of* 1874, s 4

Whenever any person apparently a vagrant refuses or fails to comply with any requisition made by a Police officer under s 4 of the Act whenever any person of European extraction commits an offence under s 23 of the Act in view of a Police officer, and whenever any Police officer has reason to think that such offence has been or is being committed the persons so refusing failing or offending may be forthwith arrested without warrant by the Police officer for the purpose of being produced in the usual manner before the officer empowered to deal with the case —*Rule III, under Act IX of* 1874

There are also some provisions for the arrest by Police officers without warrant in Act No V of 1869 (the Indian Articles of War) The following is an extract from the Act, published in the *Gazette of India* of the 13th March 1869 —"

Whenever any person subject to the said Articles deserts the Commanding Officer of the regiment corps or detachment to which he belongs shall give written information of the desertion to such civil, political or police authorities as in his opinion may be able to afford assistance towards the capture of the deserter and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose capture a warrant had been issued by a Magistrate, and shall deliver the deserter, when apprehended to military custody

II Such authorities shall also, by such means as appear to them best adapted for the purpose prevent persons reasonably suspected to be subject to the said Articles from travelling through the district subject to their jurisdiction, unless on duty or furnished with a certificate of leave or discharge

III Any Police officer may arrest without warrant any person so suspected and shall bring him without delay before the nearest Magistrate or the nearest military Commanding Officer, when no Magistrate is readily accessible to be dealt with according to law

APPREHENSION OF MILITARY OFFENDERS

IV (*a*)—Whenever any person subject to the said Articles who is accused of any military offence is within the jurisdiction of any civil, political or Police officer such officers shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his Commanding Officer

Officers above the rank of head constable and head constable in charge of outpost of the 1st and 2nd grade may arrest (1st) any person having in his possession an unlicensed still &c, or engaged in the sale of excisable articles (Act VII (B C) of 1878, ss 39 and 41) (2nd) any person concerned in the unlicensed manufacture, &c of excisable articles or the occupier of any house in which such unlicensed articles may be found (Act VII (B C) of 1878 ss 41 40) Any Police Inspector may in default of security arrest any cultivator of illegal poppy (Being Reg XX of 1817 s 29 (9) Act XIII of 1857, s 24) Darogahs are to apprehend the artificers employed in repairing or building prohibited boats (Reg XXII of 1793 s 20)

Officers in charge of Police stations may in addition, arrest without warrant all persons concerned in the unlicensed manufacture, &c, of salt (s 28, Act VII of 1861)

Presidency Towns —As to special powers of Police in Calcutta see Beng Act IV of 1866 ss 50, 72 76 and 78, Beng Act V of 1879 ss 7 19, 28 and 29 in Bombay see Act XIII of 1856 ss 86 90 92 and 94 and Bom Act IV of 1882 s 1 and in Madras see Mad Act VIII of 1867, ss 56 and 59 see also notes to ss 40 and 54 *supra*, under this heading

In the case of *Emp* v *Kandhaia*, I L R 7 All 67 an order was issued to a Police officer directing him to arrest K under this section as a person of bad livelihood K with the assistance of three others resisted apprehension and escaped It was held that he was not charged with an offence within the meaning of the term as defined by s 40 of the Penal Code and that consequently no offence made punishable by ss 224 and 225 of the Penal Code had been committed in connection with the evasion of arrest See *Emp* v *Shashi Charan Nandi*, I L R 8 Cal 331

Procedure when Police-officer deputes subordinate to arrest without warrant.

56. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

"This section applies to the Police in the towns of Calcutta and Bombay." (Act X of 1886, s. 3.)

The order must be in writing, unless the offence is cognizable, in which case any Police-officer may on his own responsibility arrest.—S. 54, *supra*.

Where a head constable verbally ordered a subordinate constable, who was with him, to arrest a person suspected of dacoity, which the constable did in the presence of the superior, it was held that the arrest was legal, as dacoity is an offence for which any Police-officer may arrest without warrant, and the arrest was virtually made by the head constable.—*Reg.* v. *Shaik Emoo*, 11 W. R. Cr. 20. If a Police-officer, without arresting a person himself, directs some of the neighbours to take charge of him, the Police-officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody.—*Quseu* v. *Behary Singh*, 7 W. R Cr. 3.

Upper Burmah.—See Reg. V of 1892 Sched. (VII.)

Refusal to give name and residence

57. When any person, in the presence of a Police-officer, commits or is accused of committing a non-cognizable offence, and refuses, on demand of a Police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Under s. 93 of Act X of 1872, "any person known to have committed, or suspected of having committed, an offence for which a Police-officer is not authorized to arrest without a warrant," and who refused, on demand of a Police-officer, to give his name and residence, might be dealt with as provided in this section. It will be seen that the person must, in the presence of a Police-officer, commit or be accused of committing a non-cognizable offence, and refuse to give his name and residence before he is subject to the provisions of this section. It may be observed here that no Police-officer can investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.—S. 155, *post*.

Burmah.—In Upper Burmah, notwithstanding anything in ss. 57 and 61 of the Criminal Procedure Code, an officer in charge of a Police-station may detain a person arrested without warrant so long as, under all the circumstances of the case, is reasonable, but in certain circumstances he must report to the Magistrate's Court the reasons for the detention.—Reg. VII of 1886, Sched. s. VIII.

See s. 4, cl. (*q*), for the definition of 'non-cognizable offence.'

Pursuit of offenders into other jurisdictions.

58. A Police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, pursue such person into any place in British India.

As to arrest without warrant, see s. 54; and as to arrest in a foreign country, see the Extradition Act (XXI of 1879), s. 54.

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or, in the absence of a Police-officer, take such person to the nearest Police-station.

If there is reason to believe that such person comes under the provisions of section 54, a Police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses, on the demand of a Police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence he shall be at once discharged.

Under Act I of 1889 (Indian Merchant Shipping Act), s. 80, power is given to the master or owner and certain others to arrest without warrant. Power is also given to private persons to arrest without warrant by s. 12 of the Indian Arms Act, XI of 1878, and by s. 172 of the Inland Emigration Act, I of 1882.

Section 87, *post*, deals with the proclaiming of offenders.

Resistance or obstruction to the lawful apprehension of another is punishable under s. 225 of the Penal Code. The rescue from the custody of a private person under circumstances justifying his making an arrest is punishable under the section.—*Emp.* v. *Kutti*, I. L. R. 11 Mad. 441: *Emp.* v. *Patadu*, I. L. R. 11 Mad. 480.

Person arrested to be taken before Magistrate or officer in charge of Police-station

60. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

No person may be detained for more than twenty-four hours; see next section.

Persons arrested by a Police-officer can only be discharged on their own bonds, or on bail, or under the special order of the Magistrate—S. 63, *post*.

Person arrested not to be detained more than 24 hours.

61. No Police-officer shall detain in custody a person arrested without warrant for a longer period than, under all the circumstances of the case, is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Compare Act X of 1872, s. 124, para. 1. That section applied to accused persons generally. Under this section it is only persons arrested without a warrant who may not be detained for more than twenty-four hours. See s. 81, *post*, as to persons arrested under a warrant.

Burmah.—See Regulation VII of 1886, Sched. s. VIII, and note to s. 67, *supra*.

A Magistrate authorizing detention in the custody of the police under s. 167 must record his reasons for so doing. He can only make an order under the section when the accused has been produced before him. See *In re Surendro Nath Roy*, 13 W. R. Cr. 27: (S. C.) 5 B. L. R. 274.

Magistrates should require applications by the Police to retain accused persons in their custody for more than twenty-four hours to be on specific grounds, and to show good cause for the presence of the accused at the Police-station being required.—*Smyth*, p. 87.

There must be a continuous detention of more than twenty-four hours in order to bring a case within the provisions of this section.—*In re Indrobee Thaba*, 1 W. R. Cr. 5. In no case is a Police-officer justified in detaining a man without reasonable ground before bringing him before a Magistrate. The time during which a person is kept in wrongful confinement is immaterial except with reference to the extent of punishment, the longer the period the more severe being the punishment.—*Reg.* v. *Suproswunno Ghoosal*, 2 Wym., Cr. Rul., 70: (S. C.) 6 W. R. Cr. 88.

Even if a person be rightly arrested, it does not rest with the discretion of the Police-officer to keep the prisoner in custody where and as long as he pleases. Under no circumstances can he be detained without the special order of a Magistrate for more than twenty-four hours. At the expiration of twenty-four hours, unless the special order has been obtained, the prisoner must either be discharged or sent on to the Magistrate, and any longer detention is absolutely unlawful; and though the Code is not so express upon the place or the time of confinement, it is perfectly clear that it was intended that where a Police-officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the Police-station and be placed in the custody of the officer in charge of the station, who is the person intrusted by the Act with the conduct of the enquiry.—*Reg.* v. *Behary Singh*, 7 W. R. Cr. 3. See notes to ss. 167 and 344, *infra*.

The provisions of the section are imperative, and it is not necessary for the Crown to prove that an Inspector of Police charged with having detained prisoners for more than twenty-four hours did so with a guilty knowledge.—*Reg.* v. *Bussooram Dass*, 19 W. R. Cr. 36.

If, as is frequently the case, a Police-officer, without arresting a person himself, directs some of the neighbours to take charge of him, the officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody.—*Reg.* v. *Behary Sing*, 7 W. R. Cr. 3.

The exercise of unwarrantable personal violence by a Police-officer to any person in his custody is punishable under s. 29, Act V of 1861. See s. 50, *supra*.

In all heinous cases, where a single prisoner is sent in by the Police, he should be handcuffed. When two or more prisoners are sent in, they should be handcuffed two and two together. In cases not of a heinous nature, prisoners should not be handcuffed unless violent, and then only by the order of the officer in charge of the station.—*Bengal Police Manual*, 2nd Edn., 1882, p. 398.

62. Officers in charge of Police-stations shall report to the District Magistrate, or, if he so directs, to the Subdivisional Magistrate the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions

The report must be made to the Magistrate of the District, unless he directs it to be made to the Subdivisional Magistrate. The object of this section is, that the judicial branch should promptly exercise authority, if necessary, with regard to all arrests by the Police, and it seems to have been framed with this view, that, as no person can be released without the order of a Magistrate, except on bail or recognizance, it shall be the Magistrate's responsibility, as well as that of the Police, if a person illegally arrested remains unnecessarily in custody.—*Smyth*, p. 84.

63. No person who has been arrested by a Police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Discharge of person apprehended.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence

The provisions as to jurisdiction, and giving the Magistrate power to arrest personally, are new.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by or in presence of Magistrate

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Power, on escape, to pursue and re take.

This and the following section re enact, with verbal alterations, the provisions of s. 112 of Act XXV of 1861, which were omitted from Act X of 1872.
As to pursuit of offenders into other jurisdictions by a Police-officer, see ss. 54, 58, *ante*.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

Provision of sections 47, 48 and 49 to apply to arrests under section 66

See note to preceding section.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule, direct.

Form of summons

Such summons shall be served by a Police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

Summons by whom served

This section applies to the Police in the towns of Calcutta and Bombay.

For form of summons, see Sched. V, No. I.

'Writing' includes printing, lithography, photography, and engraving and the like.—*Section 4, cl. (e).* Every summons should be signed in full by the Magistrate by whom it is issued, with the name of his office or the capacity in which he acts. The practice of signing initials only, or using a stamp, is objectionable.—*Smyth*, p. 90, but a warrant is not bad simply because it is initialled and not signed.—*Emp.* v. *Janki Prasad*, I. L. R. 8 All. 203.

In all processes, the father's name, the caste or tribe, and the residence of the persons to be arrested or summoned should be entered so as to place his identity beyond all doubt. The Court from which the process is issued and the name of the district should also be set forth.—*Smith*, p. 92.

A summons should be clear and specific in its terms as to the title of the Court, the place at which, the day and the time of the day when the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and, if the case in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned.—*Per* STRAIGHT, J., *Emp.* v. *Ram Saran*, I. L. R. 5 All. 7. If a summons does not state the place at which or time of the day when the attendance of the person summoned is required, he cannot be punished under s. 174 of the Indian Penal Code for disobedience to the summons.—*Ibid.*

So in Madras it was held, that the summons should specify the place at which the person summoned is required to attend. *Mad. H. C. Pro.*, *20th December* 1872; *Weir*, p. 41. Where no place is specified, failure to appear is no offence.—*Ibid*, *30th November* 1874; *Weir*, p. 41.

In the case of *Emp.* v. *Kisan Bapu*, I. L. R. 10 Bom. 93, the accused, who was summoned to appear and answer a criminal charge, attended at the Magistrate's Court, but not finding the Magistrate present at the time mentioned in the summons, departed after waiting two or three minutes. The Court held that he was bound to wait a reasonable time, and that he had not done so, and accordingly convicted him under s. 174 of the Penal Code. See *Queen* v. *Sutherland*, 14 W. R. Cr. 20.

By s. 57 of the Presidency Magistrates' Act, IV of 1877 (which has been entirely repealed with the exception of that section), a fee of eight annas must be paid for every summons or warrant issued by a Presidency Magistrate except in the case of a summons to attend and give evidence or to produce documents, in which case there must be paid a fee of four annas:

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty.

The following rules have been framed by the High Court of Judicature at Fort William in Bengal, in accordance with cl. 2, s. 20 of the Court Fees Act, 1870, declaring the fees chargeable for service and execution of the several processes in the Courts of Magistrates in Bengal and Assam:*—

I.—The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, *viz.*:—

	Rs.	A.	P.
(1) Warrant of arrest—			
For the warrant in respect of each person named therein	1	0	0
(2) Summons—			
For the summons in respect of one person, or of the first two persons residing in the same place	0	8	0
In respect of every additional person named therein	0	4	0
(3) Proclamation for absconding party under s. 171 (87, *infra*) of the Code of Criminal Procedure—			
For the proclamation	2	0	0
(4) Proclamation for witness not attending (s. 333) [87, *infra*]—			
For the proclamation	0	8	0
(5) Warrant of attachment—			
For the warrant	1	0	0
Where it is necessary to place officers in charge of property attached, for each officer so employed, per diem	0	4	0

* Published at page 304 of the *Calcutta Gazette* of the 2nd April 1879, and at page 596 of the *Assam Gazette* of the 18th October 1879.

These rules apply only to processes served and executed by Magistrates' establishments. By this, however, it was not intended that processes issued under the orders of a Court of Session should be served without charge, as it was contemplated that such processes should always be issued by the District Magistrate at the discretion of the Sessions Judge (*H. C. 1818 of 1881*).

Under cl. 2, s. 68 of Act X of 1882, the Lieutenant-Governor has declared that processes issued under that Act shall be served by peons appointed under the rules framed by the High Court in accordance with s. 22 of the Court Fees Act, VII of 1870. (*Vide Notification, Government of Bengal, the 11th May* 1883; *Calcutta Gazette*, 23rd *ibid*, p. 426.)

Similar orders have been passed by the Chief Commissioner, Assam. (*Vide Notification, Judicial Department, No. 46 of 20th June* 1883; *Assam Gazette of 23rd ibid*, p. 290).

The provisions of s. 21, cls. iii and iv, Act VII of 1870, and of paras. iii and iv of these Rules, apply also to injunctions. Criminal officers are, however, reminded that injunctions in proceedings not connected with *offences* are not chargeable with any fee. An injunction under s. 143, Code of Criminal Procedure, would, for example, be chargeable withit he above fee; whereas an injunction under s. 144 or 145 of the Code would not carry any fee (*Rule No. 10 of 20th September* 1882).

	Rs.	A.	P.
(6) In cases where an application is made by a complainant for the recovery of costs awarded under s. 31, Act VII of 1870, or of compensation granted under s. 308 (545, *infra*), Code of Criminal Procedure, or where a defendant applies for the recovery of compensation awarded to him under s. 209 (250, *infra*) of the Code of Criminal Procedure—			
For the warrant for the levy of the fine or compensation	0	8	0
(7) Written order—			
For the order	1	0	0
(8) Injunction—			
For the injunction...	1	0	0
(9) Notice—			
For the notice	1	0	0

II.—Nothing herein contained shall be deemed to authorize the levying of any fee for any summons to attend as a juror or assessor in a Court of Session, and no fee shall be chargeable on any such summons.

III.—No fee shall be chargeable in advance on any process of a Criminal Court in any case where the prosecution is on the part of Government, but it shall be competent to any Magistrate in such case, if the accused is convicted, to order that such fees shall be paid by the accused, or any of them, in like manner as if such fees had been paid by the prosecutor in the first instance.

IV.—No process which comes within the operation of Rules I or VI shall be drawn up for service or execution, except upon an application made to the Court for that purpose in writing on a document bearing upon its face stamps not less in amount than the fee which is directed to be charged for serving and executing the process so sought to be drawn up. This application may, however, at the option of the party making it, be included in the petition by which he moves the Court to order the process to issue, but in that case the petition must bear the requisite stamps for the process fee, in addition to such stamps, if any, as are needed for its own validity: and in either case, the filing of the application, thus duly stamped, shall constitute payment of the fee chargeable for the process.*

V.—When a proclamation has been issued for an absent witness, if the witness shall afterwards appear, and the Court shall be of opinion that such witness had absconded or concealed himself for the purpose of avoiding the service of a warrant upon him, such Court may order the witness to pay the cost of the proclamation.

VI.—In the districts named in the margin, where the Subdivisional System has not been fully introduced, in every case where a process has to be executed at a distance of more than 25 miles from the Court from which it is issued, an addition of one-fourth is to be made to the fee chargeable, and if more than 50 miles, an addition of one-half.

Bengal.—Rajshahye, Bograh, Dinagepore, Malda, Rungpore, Bauceoorah, Sylhet, Hazareebagh, Beerbhoom, Cachar, Chittagong, Noakhally, Singhbhoom, Nowgong, Lohardugga, Manbhoom.

Assam.—Sylhet, Nowgong.

VII.—In the districts named in the margin, where, during a portion of the year, travelling, except by boat, is impracticable, boat-hire may, when it has to be incurred, be charged in addition to the fees payable under Rules I and VI above. The rates at which such boat-hire shall be charged shall be fixed from time to time by the District Magistrate, and shall be sufficient only to cover on the whole the actual cost of boat establishment as it may be necessary to maintain for the purpose of serving processes in cases not cognizable by the Police.

Jessore.	Mymensing.
Pabna.	Tipperah.
Dacca.	Noakhally.
Furreedpore.	Sylhet.
Backergunge.	

VIII.—Subject to the confirmation of the Local Government, the High Court may, by notification in the Government Gazette, on sufficient cause shown, exempt from time to time any district, or part of a district, from the operation of all or any of the above rules, and may similarly bring any district, or part of a district, which may be exempt, under the operation of the same.

For paragraphs VII and VIII above, which relate only to Bengal, substitute the following paragraphs VII, VIII, and IX for processes in Assam

VII.—In the districts named in the margin, where, during a portion of the year, travelling, except by boat, is impracticable, boat-hire may, when it has to be incurred, be charged in addition to the fees payable under Rules I and VI above. The rates at which such boat-hire shall be charged shall be fixed from time to time by the District Magistrate,

Sylhet.	Nowgong.
Kamroop.	Lukhimpore.

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* In exercise of the powers conferred by ss. 26 and 35 of the Court Fees Act, 1870, and of all other powers enabling him in this behalf; and in supersession of Notification by the Government of India in the Financial Department, No. 1520, dated 5th March 1875, and all other notifications on the subject, the Governor General in Council is pleased to issue the following directions:—

I.—When in any case the fee chargeable under the said Act is less than Rs. 10, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps bearing the words "court fees," at present in use, or adhesive stamps of any different shape, size, or pattern bearing the words "court fees," which may hereafter be issued for use, in supersession of, or in addition to, the adhesive stamps now in use.

II.—When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 10, such fee shall be denoted by impressed stamps bearing the words "court fees," adhesive stamps being only employed to make up fractions of less than Rs. 10.

III.—If in any case the amount of the fee chargeable under the said Act involves a fraction of an anna, such fraction shall be remitted.

IV.—This Notification shall take effect on and after the 1st June 1888 (postponed to 1st July 1888 by Notification 1236, *Gazette of India*, 2nd June 1888).

[*Notification, Government of India, No.* 961, *of* 18*th April* 1888. (*G. I. No.* 2 *of* 11*th May* 1883.)]

For rules to regulate the use of adhesive and impressed stamps in accordance with this notification, see *Calcutta Gazette*, 4th July 1888, Part I, p. 871.

subject to approval by the Sessions Judge, and shall be sufficient only to cover on the whole the actual cost of hiring boats or of such boat establishment as it may be necessary to maintain for the purpose of serving processes in cases not cognizable by the Police.

VIII.—In addition to the fees payable under Rules I, VI and VII, the amount of fees, if any, which may legally be charged for ferries to be crossed by the peon serving the processes, shall be levied in cash from the party at whose instance the process is issued.

IX.—Subject to the confirmation of the Local Government, the High Court may, by notification in the Government Gazette, on sufficient cause shown, exempt from time to time any district, or part of a district, from the operation of all or any of the above rules, and may similarly bring any district, or part of a district, which may be exempt, under the operation of the same.* *Cal. H. C. Cs No.* 13 *of 2nd April and No.* 35 *of 17th November* 1879; *Wilkins*, p. 89.

The following rules have been framed under cl. 3, s. 20 of the Court Fees Act, VII of 1870:—

The following monthly salaries shall be allowed to the peons employed in the service or execution of processes in the Courts of the Magistrates:

1*st*.—In the Court of the Magistrate of the District—

Peons, each	...	...	Rs 7

2*nd*.—In Subdivisional Magistrates' Courts—

Peons, each	...	...	Rs. 7

NOTE.—The rates of remuneration for peons, provided by these rules, are intended to secure the services of men who can read and write. But whenever, on the occurrence of a vacancy, candidates thus qualified shall not be available, the Court on whose establishment the vacancy exists may record a declaration to that effect, and may then appoint temporarily some person whom it may consider competent to perform the duties, and who shall be paid at the rate of Rs 5 per mensem in Munsiff's Courts, and Rs. 6 per mensem in all other Courts; provided that such appointments, when made by a Court subordinate to the District Judge or the Magistrate of the District, shall be subject to the approval of such Judge or Magistrate, and shall cease as soon as duly-qualified candidate shall be procurable.—*Wilkins*, p. 94.

The following rules have also been framed by the High Court of Judicature at Fort William in Bengal, in accordance with s. 22 of the Court Fees Act, 1870, for the guidance of Magistrates in Bengal and Assam:—

1*st*.—The Magistrate of every district shall ascertain the average number of processes issued in a year from his own Court, and from each of the Courts subordinate thereto, during three years last past.

2*nd*.—The peons to be employed in each district shall be in number sufficient for the execution of a like number of processes, each peon being for this purpose considered capable of executing 300 processes per annum.

3*rd*.—In the districts named in the margin, where the peons entrusted with a large proportion of processes have to be conveyed by boat, the number of processes which each peon is expected to serve may be reduced by one-third, and the number of peons to be employed shall be calculated accordingly.

Bengal.—Backerginge, Dacca, Jessore, Sylhet, Kamroop, Nowgong, Luckhimpore, Chittagong, Dinagepore, Mymensing, Rajshahye, Rungpore.
N B.—For the districts in the 2nd para. the calculation is to be made for from May to October, inclusive, only.
Assam.—Sylhet, Kamroop, Nowgong, Luckhimpore.
N.B.—For Luckhimpore the calculation is to be made for from May to October, inclusive, only.

4*th*.—Where it appears advisable to the Magistrate of the District, he may authorize the appointment of such number of peons on the whole for all the Courts in his district as may suffice for executing the total number of processes of those Courts, and may from time to time apportion such peons according to need among such Courts.

5*th*.—When it appears to the District Magistrate that the number of processes issued out of any Court or Courts in the district has increased by 10 per cent., he shall be competent to make a corresponding increase in the number of peons, and if there shall be a diminution to the like extent, or if he should be satisfied that the processes of all or any of such Courts can be executed by a smaller number of peons, it shall be his duty to make a reduction accordingly.—*C. Cs. No.* 13 *of 2nd April and No.* 35 *of 17th November* 1879; *Wilkins*, p. 95.

Certain Processes not chargeable with Fees.—No fee shall be chargeable for serving and executing any process, such as a notice, rule, summons or warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of, and punishing, any act done, or words spoken, in contempt of its authority.†—*Wilkins*, p. 96.

Process Fees in Madras.—The following rules have been passed by the Madras High Court under s. 20 of the Court Fees Act:—

On and after the 16th August 1873, all payments for the service of processes issued by the High Court in its Ordinary Appellate Jurisdiction and by the Civil and Revenue Courts subordinate to the High Court, and by Criminal Courts in the case of offences other than offences for which the Police may arrest without warrant, shall be collected according to the rates fixed in Schedules A and B.

(Schedule A deals with Civil and Revenue Courts.)

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* No general rule can be laid down respecting the refund of the value of Court-fee stamps, in cases where the fees have been paid into Court for the issue of processes, and such processes have not issued. Each case must be left to the discretion of the Court, and decided on its merits. Where the amount is large, it may well be refunded (*H. C.* 1535 *of* 1882).

† Published at p. 804 of the *Calcutta Gazette* of the 2nd April 1879, and at p. 596 of the *Assam Gazette* of the 10th October 1879.

‡ This rule is Rule II of the Rules under cl. 1, s 20, Court Fees Act, 1870, which otherwise apply only to civil processes.

Schedule B (Criminal Courts)	Rs	A	P
1 Summons to defendant	0	8	0
And for every additional defendant if applied for at the same time and if resident in the same neighbourhood	0	4	0
2 Summons to a witness	0	8	0
And for every additional witness if applied for at the same time and if witness resides in the same neighbourhood	0	4	6
3 Warrant of arrest	0	12	0
4 Notice order injunction or warrant not otherwise provided for	0	8	0

N B—(1) If a process is to be served or executed within a radius of six miles from the court house, half the above rates only are to be charged The Judge of every Court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the court house

(2) When a warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution an additional fee at the same rate shall be levied from the party at whose instance the warrant was issued for every fifteen days or portion of fifteen days until return is made provided that the delay in executing the first warrant is not attributable to the officer of the Court *Madras Gazette* 1873 pp 1255, 1256

As to establishment for the service of criminal processes in Madras see the rules of the Madras High Court under s 22 of the Court Fees Act *Madras Gazette*, 1873 p 1235

Process fees in Burma The following fees for executing processes issued by the Criminal Courts in the case of offences other than offences for which Police officers may arrest without a warrant are in force in Burma —

Summons on witness	8 annas
Summons on accused person and any other notice, proclamation, or injunction not specially provided for	1 rupee
Warrant of arrest	2 rupees.

The above fees must be paid by the complainant at whose instance the process is issued, and no further charge may be made on account of boat hire or other expenditure

Any Magistrate who has power to entertain cases on complaint preferred directly to himself has authority on special grounds to be recorded in his proceedings, to remit the fee chargeable on any process issuing from his Court No fee is chargeable upon any process issued by a Criminal Court of its own motion — *Burma Gazette* 1879 Part II p 198

For rules as to the service of processes in Aden see *Bombay Gazette* 1877 p 622

The following rules as to service of summons on witnesses in Native States, natives of rank, and Revenue officers are in force in Bombay

It having been brought to the notice of the High Court that serious delay in the disposal of criminal cases is frequently caused by the difficulty in obtaining the attendance of witnesses residing in Native States, the Court in order to provide a remedy as far as in its power, is pleased to issue the following instructions for the guidance of Magistrates —

I In forwarding an application or summons for the attendance of a witness residing in a Native State care should be taken to give such a description of him that he may be easily identified Thus for instance besides the person's name and father's name the requisition should indicate his age caste and village, and it should be mentioned if his village is in the neighbourhood of any well known town

II The probable time during which the witness will be detained should also be stated, and, in fixing the date when the appearance of a witness is required, reasonable time should be given, so as to allow his being found and sent off

III When practicable the batta allowed by Government orders for the expenses of witnesses should be transmitted at the time of sending the requisition

IV By these arrangements it is hoped that a greater degree of punctuality with regard to the attendance of witnesses from Native States will be secured and the Court considers it desirable that officers should (when it is possible) avoid summoning such witnesses for the preliminary enquiry before the Magistrate in those cases where their evidence, though necessary before the Session Court is not indispensable for the purpose of commitment

Batta to witnesses in criminal cases should be paid daily as it becomes due

In the case of 1st and 2nd class Sirdars and other native gentlemen of high position a letter signed by the Judge or Magistrate and to the same effect as Form A Sched II Criminal Procedure Code (cf Sched V, No I of this Act) may be substituted for the ordinary summons

In summoning Revenue-officers of any description due consideration shall be had to the loss and inconvenience the public service may suffer from the absence of those functionaries from their duties When their evidence is required they shall be detained for as short a period as possible, and their personal attendance shall be dispensed with whenever it can be consistently with the requirements of justice *Bombay Gazette* 1879 pp 471 475

Summons how served

69 The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate

As to service upon a servant of Government or of a Railway Company see s 72

Whenever a summons to appear as a witness is issued upon an officer of Police, it should be served upon such officer through the District Superintendent of Police or the Assistant District

Superintendent in charge of the outpost to which the individual summoned may belong.—*Smith*, p. 90; see *Wilkins*, p. 106.

The mere showing to a witness of a summons is not sufficient service. Either the original should be left with the witness, or should be exhibited to him, and a duplicate delivered or tendered; see *Reg.* v. *Kharsanlal Dunatram*, 5 Bom., Cr. Cas. 20.

The refusal to give a receipt for a summons is not an offence under s. 173 of the Indian Penal Code.—*In re Bhoobuneshwar Dutt*, 2 C. L. R. 80: (S. C.) I. L. R. 3 Cal. 621, following *Queen* v. *Kolya bin Fakir*, 5 Bom. H. C. R., Cr. Cas. 34.

Service when person summoned cannot be found.

70. Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him: and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

See note to preceding section.

The provision as to leaving the summons with a servant in the Presidency-towns is new.

Procedure when receipt cannot be obtained.

71. If the signature mentioned in sections 69 and 70 cannot, by the exercise of due diligence, be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides: and thereupon the summons shall be deemed to have been duly served.

Returns of Service of Summons in what form to be made.—Attention should be paid to the following rules in making the returns of service of summons in criminal cases:—

(*a*) *Personal Service.*—When the summons is served personally, the service and the signature of the person served on the back of the summons or copy should be proved by the solemn declaration recorded in writing of the person who actually effected such service; and the identity of the person served with the party to whom the process is addressed should be proved by the affidavit or solemn declaration of some one personally acquainted with the person to be served.

(*b*) *Service on an Adult Male Member of the Family.*—If the service be made on an adult male member of the family of such person residing with him, it should be proved by the solemn declaration of the officer effecting the service, and, if necessary, of some other person or persons acquainted with the facts that the defendant could not be found, and that the person to whom the process was delivered was an *adult* male member of his family, and was actually residing with him at the time of such service.

(*c*) *Service by Affixing Copy of the Summons to the House.*—If the service be made by affixing it to the dwelling house of the person to be served, it should, in like manner, be proved that such person could not be found, nor any other person on whom service could be made, and that the person to be served *was ordinarily residing* in the house, on the outer door of which a copy of the process was fixed, at the time when it was so fixed.—*Cal. H. C. C. O. No.* 9 *of* 6*th April* 1871.

Service on servant of Government or of Railway Company.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Section 158 of Act X of 1872 empowered the Court to send the summons for service to the head of the office in which the person summoned was employed. Now this course is to be ordinarily pursued, and moreover the head of the office is to return the summons with the endorsement required by s. 69.

The following rules for service of summons upon persons in the employment of Government have been issued by the High Court in Calcutta:—

(*a*) Whenever a summons to appear as a witness in a criminal case is issued against an officer of Police, it shall be served upon such officer through the Superintendent of the District, or the Assistant in charge of the Subdivision to which such officer may belong.—*Cal. H. C. C. O. No.* 14 *of* 6*th December* 1866.

(*b*) All summons on Medical Subordinates at subdivisions must be served through the Magistrate or other executive head of the district, in order to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of their medical duties during their absence.—*Cal. H. C. C. O. No.* 1 *of* 10*th January* 1868.

(c) Whenever it may be necessary to summon an officer or soldier in military employ to attend a Civil or Criminal Court as a witness, the process-server, who is to serve the summons, must be instructed to take it under cover to the officer in command of the regiment or detachment with which the witness may be serving, and to apply for his assistance in serving it. With this assistance, the process-server shall then proceed to serve the process, and shall make his return direct to the Court. In such cases sufficient time should always be given to admit of arrangements being made for the relief of the witness summoned.—*Cal. H. C. C. O. No.* 24 *of* 24*th June* 1878.

(d) When Jail or other Departmental Officers of Government, reside in the station, are summoned as witnesses, arrangements should be made to send for them only when actually wanted.—*Cal. H. C. C. O. No.* 8 *of* 22*nd August* 1878. See *Wilkins*, pp. 106-7.

This rule may conveniently be extended to all cases in which it may be necessary to serve a summons on an accused person or a witness in the service of any public department.—*Smyth*, p. 90.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Compare Act XXIII of 1840, s. 1, Execution of Process Act, and Act IV of 1877, s. 50.

Proof of service in such cases, and when serving officer not present.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

Form of warrant of arrest.

Continuance of warrant of arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Compare Act X of 1872, s. 159, and Act IV of 1877, s. 56, which did not require the seal. It is not necessary under this section, as it was under s. 159 of Act X of 1872, that the warrant should be sealed by the Magistrate; it is sufficient if it bears the seal of the Court.

For form of warrant of arrest, see Sched. V, Form 2.

'Writing' and 'written' are defined in s. 4, cl. (*s*).

Fees.—As to fees for warrants and other processes, see note to s. 68, *ante*.

No general warrants for arrest should ever be issued by a Court of Justice. See *Re Hastings*, 9 Bom. H. C. R. 154, *per* SARGENT, J.

Every warrant should state, as shortly as possible, the special matter on which it proceeds. Every warrant is to be in the Form B given in the second schedule (see Sched. V, No. 2, of this Code), or to the like effect. A strict adherence to the form of warrants of arrest prescribed by the Code will tend to prevent their being granted irregularly and without inquiry as to whether the circumstances justify their issue.—*Smyth*, pp. 91, 92.

Great care should be taken to have the forms of warrants distinguished from forms of summonses, and to make the police know the difference. And great care should also be taken that a warrant, which always implies personal arrest and restraint, never goes forth when a summons to attend would be sufficient for the ends of justice, and any attempt to coerce or restrain a party who has been summoned only should be checked and punished. The Police are to carry out to the letter the instructions issued in the writ handed over to them; the responsibility for the consequences of an informal or illegal process, bearing the seal and signature of the Magistrate, rests with him.—*Smyth*, p. 92.

Warrants of commitment issued by European Magistrates should, as a rule, and certainly in all cases where more than six months' imprisonment is awarded, be filled up in English; and warrants for the release or remission of sentences of prisoners confined in jail should be in English,

and signed at full length by the officer issuing the order. In these warrants the prisoner's name, father's name, his residence, caste, and term of sentence should be invariably stated. *Smyth*, p. 93.

The warrant ought to be signed in full by the Judge or Magistrate who issues it with his own hand; a signature affixed by means of a stamp is not sufficient. *–Smyth*, p. 93: *Subramanya Ayyar v. Queen*, I. L. R. 6 Mad. 396. So in Bengal the High Court, at the request of the Bengal Government, has recently issued a circular, reminding all Judicial Officers that in case of all documents which are required by law to be *issued*, the impression of a stamp bearing the officer's name is insufficient and illegal. *–C. O. No.* 8 *of 15th August* 1882: *Wilkins*, p. 119. It is improper to initial a warrant merely, but a warrant is not bad because it is initialled and not signed. *— Emp.* v. *Janki Prasad*, I. L. R. 8 All. 293.

Before a warrant can issue, evidence must be given that an offence has been committed, and a punishable offence must be stated in the warrant.– *In re S. M. Bodhumukhi Debi*, 6 B. L. R. Appx. 129. See remarks of PHEAR, J., in *In re Surendro Nath Roy*, 13 W. R. Cr. 27: (S. C.) 5 B. L. R. 274.

In the case of *Re Hastings*, 9 Bom. H. C. R. 154, the warrant authorized the committal of James Hastings without giving any description whatever as to what James Hastings was indicated thereby. It was held, that the warrant was bad. SARGENT, J., after referring to *Hood's case*, I Mood. Cr. Cas., 281, in which the omission of the Christian name of the person to be apprehended was held to vitiate the warrant, said: "I think I am bound to follow the principle involved in that ruling, which is, that a warrant should contain distinct and unequivocal intimation to the person that he is the individual meant to be apprehended and must surrender to the officers, and this too, the more especially, as the form of warrant prescribed by the Code requires that his residence should be inserted. The issuing of general warrants is, it is well known, illegal, and this, though not, properly speaking, a general warrant, which means a warrant to apprehend all persons committing a particular offence or class of offences, is however of such a general nature as to justify the Police in arresting any person of the name of James Hastings, whoever he may be, or wherever he may be found, the number of persons to be arrested under it being limited only by the limit to the number of persons bearing that name. The warrant in this case is, in my opinion, far more general than was the warrant in *Hood's case*, and I am therefore of opinion that it is bad."

The provisions of this section apply to every summons or warrant issued under the Code.—S. 93, *post*.

Court may direct security to be taken.

76. Any Court issuing a warrant for the arrest of any person may, in its discretion, direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Recognizance to be forwarded.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

As to deposit of money or Government securities in lieu of a bond, see s. 513, *post*.

Warrants to whom directed.

77. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrants should be directed to the senior officer of Police in attendance at a Court, by whom they should be registered in a book kept for that purpose. That officer should then endorse the name of the officer who is to be charged with its execution (generally an officer in charge of a Police-station) upon each warrant, and despatch it to him without delay. The officer receiving the warrant may again transfer it for execution to another Police-officer (see s. 79), and in every such case a regular endorsement of the process must take place so that the name of the officer executing the process may be apparent on the order itself.—*Bengal Police Manual*, p. 396, 2nd Edition.

A warrant ought not to be issued to an unofficial person, except when the Magistrate is without the assistance of competent Police-officers, and unless the urgency is imminent.—*In re Surendra Nath Roy*, 5 B. L. R. 274: (S. C.) 13 W. R. Cr. 27.

78. A District Magistrate or Subdivisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his District or Subdivision for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, &c.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

The powers given by this section could only, under the former Code, be exercised by the Magistrate of a district. Now Subdivisional Magistrates may direct warrants to landholders for the purposes mentioned in the section.

A landholder required under this section to execute the warrant, neglecting to do so would be punishable under s. 187 of the Penal Code.

79. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to Police-officer.

As to when persons are bound to assist Magistrates and Police, see s. 42 and note to s. 43.

80. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Notification of substance of warrant.

Compare s. 56, *supra*, and see note to s. 46, *supra*.

Under s. 81, the person arrested must be brought before the Court without unnecessary delay. Wrongful confinement is punishable under s. 342 of the Penal Code. That section is as follows: "Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

Having regard to the definition of wrongful confinement, it would appear that, except in cases which might come under s. 79 of the Penal Code, a Police-officer who without a warrant arrested a person charged with a non-cognizable offence, would bring himself within the terms of s. 342 of the Penal Code, the detention being illegal. In the case of *Reg.* v. *Budrool Hossein*, 24 W. R. Cr. 51, a Sub-Inspector, in consequence of something which took place on making inquiries, detained a person who came to make a complaint, and after a short interval, during which he consulted his superior officer, discharged him on his recognizance. The person detained prosecuted the Sub-Inspector for wrongful confinement under s. 342 of the Penal Code. The High Court (L. S. JACKSON and MCDONELL, JJ.) held, that although there was probably excessive and mistaken exercise of powers not civilly excusable in a Police-officer, the facts did not amount to the criminal offence of wrongful restraint, as there was no malice or intention of doing an act of the nature spoken of in ss. 339 and 340 of the Penal Code, and no voluntary obstruction or restraint. The report does not show the circumstances under which the detention took place, but a slight reference to ss. 339, 340 and 342 of the Penal Code will satisfy to show that the question of malice or intention has nothing to do with the constitution of the offence of wrongful confinement, however much it may affect the question of the amount of punishment to be inflicted. See *Suprosunno Ghosal*, 2 Wym., Cr. Rul., 78; (S. C.) 6 W. R. Cr. 88. See also the case of *Bussoram Dass*, 10 W. R. Cr. 36. Detention by a Police-officer for over 24 hours is punishable under s. 29 of Act V of 1861 as a wilful breach of the rule laid down by s. 167, *post* (see *Bussoram Dass*, 19 W. R. Cr. 36), unless the detention is not continuous.—*Indroba Thaba*, 1 W. R. Cr. 31. See note to s. 167, *post*.

A Police-officer should not attempt to arrest a person without having the warrant in his possession, so as to be able to show the warrant if necessary.—*Emp.* v. *Amar Nath*, I. L. R. 5 All. 318, or, without having it endorsed, if it was not originally directed to him.—See note to s. 46, *supra*, and also the last paragraph of s. 84, *infra*. If a person, on being arrested, object that there is a mistake, and that he is not the person named in the warrant, the officer should release him, unless he believes in good faith he is the person (Penal Code, s. 79). If he so believe, he should proceed with the arrest, and the person arrested will have no right of private defence (Penal Code,

s. 99). If the person against whom the warrant was issued, or whom the offi cerexecuting the warrant believed in good faith to be that person, resist, the officer may use all means necessary to effect the arrest.

Section 79 of the Penal Code declares that nothing is any offence which is done by a person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it. Accordingly, if a Police-officer arrest a person, having *bonâ fide* mistaken him for another, whom he is authorized under the warrant to arrest, or if, without having a warrant, he arrests a person *bonâ fide* believing that a cognizable offence has been committed, when in fact no such offence has been committed, he will be protected.

By Expl. II to s. 99 of the Indian Penal Code, a person is not deprived of the right of private defence against an act done or attempted to be done by the direction of a public servant, unless he knows or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority if demanded.

In the case of *Codd* v. *Cube* (45 L. J., Mag. Cas., 101; L. R., 1 Exch. Div. 352; 34 L. J. 453; 13 Cox, C. C., 202), a warrant had been issued, addressed to all Police-officers of Devon, for the arrest of C for trespass in pursuit of conies. It was held that C was justified in resisting a constable who attempted to arrest him without having the warrant in his possession, although it was not shown that the production of the warrant was required by C. The case was appealed, and it was held that a person against whom a warrant has been issued for an offence less than felony, (all Police-officers being empowered to arrest without warrant in case of felony,) cannot be arrested by a constable who has not the warrant in his possession at the time of the arrest.

Person arrested to be brought before Court without delay.

81. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security), without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person.

Compare ss. 60 and 61, *supra*. Warrants issued against railway servants must be entrusted for execution to some Police-officer of superior grade, who shall, if he find on proceeding to execute the warrant that the immediate arrest of the railway servant would occasion risk and inconveniences, make all arrangements necessary to prevent escape, and apply to the proper quarter to have the accused relieved, deferring arrest until he is relieved. (*Government of India, Home Department, Resolution No. 206-3, dated Simla, the 20th June 1877, circulated with Government of Bengal Circular No. 40, dated 3rd July 1877.*)—*Bengal Police Manual*, p. 399, 2nd Edition. See s. 72, *ante*.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

Warrant forwarded to Magistrate for execution outside jurisdiction.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

As to officers who are empowered in Bombay to act under this section, see *Bombay Gazette*, 1873, p. 430.

Under Sched. III, any Magistrate of the third class has power to endorse a warrant.

As to manner of effecting arrest of an accused escaping to Aden, see Punjab Rec., 1883, Police Department, p. 133.

Language to be used in Warrant of Arrest.—Warrants of arrest issuing out of a Magistrate's Court should be written "in the language in ordinary use in the district in which it is held,"—that is to say (with certain exceptions), the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for execution to the Magistrate of a district where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language, or into English. Moreover, in such cases it would be proper that the warrant should always be accompanied by a letter in English requesting its execution.—*Cal. H. C. C. O. No. 3 of 25th July 1872*; *Wilkins*, p. 107.

84 When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Warrant directed to Police-officer for execution outside jurisdiction.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local Police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the Police in the towns of Calcutta and Bombay.

See note to preceding section. As to the Police in Madras, see s. 1, *supra*.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure on arrest of person against whom warrant issued

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant, and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Procedure by Magistrate before whom person arrested is brought.

Nothing in this section shall be deemed to prevent a Police-officer from taking security under section 76.

The Commissioner of Police has now the power to admit the person arrested to bail.

For form of bail bond after arrest under a warrant, see Sched. V, Form 3.

C.—Proclamation and Attachment.

87 If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself, so that such warrant cannot be executed, such Court may publish a written proclamation, requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

Proclamation for person absconding.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village ; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Section 171 of Act X of 1872 provided for the publication of a proclamation requiring a person accused of an offence not coming within s. 148 to appear and answer the complaint ; and s. 353, para. 1, provided for a proclamation requiring the attendance of a witness. The provisions of this section are substantially the same as those of the sections mentioned above. See also Act X of 1875, s. 82, and Act IV of 1877, ss. 67, 137. The last clause as to the day of publication is new. The words 'from the date of publishing such proclamation' in the first paragraph clear up a doubt as to the commencement of the period for the appearance of a person absconding ; see *In re Ramkishore Sein*, 10 B. L. R. App 14, 19 (S. C.) 19 W. R. Cr. 12.

Under the former Code, a proclamation could not be issued in summons cases,—that is to say, cases punishable with a fine only or with imprisonment for a period not exceeding six months, or with both. Now a proclamation may be published for the appearance of any person against whom a warrant has been issued.

For forms of proclamation requiring the attendance of persons accused and of witnesses, see Sched. V, Forms 4 and 5.

Fees.—As to fees for attachments and other processes, see *ante*, note to s. 68.

The fee for a proclamation for an absconding party is Rs. 2 ; for the proclamation for a witness not attending, annas 8. The Court may order a defaulting witness to pay the cost of the proclamation.—*Cal. H. C. C., 2nd April*, 1879 *and 17th November*, 1879 ; *Wilkins*, p. 89.

Any Magistrate has power to issue proclamations in cases judicially before him.—*Schedule III-i, cl.* (3)

See ss. 172 and 174 of the Indian Penal Code as to the punishment for absconding to avoid service of a summons, order or other proceedings issued by a public servant, and as to non-attendance in obedience to a summons, notice, order or proclamation issued by a public servant. It will be observed that s. 172 of the Penal Code does not refer to a warrant, which is addressed not to the person to be arrested, but to the Police officer or other person. It has been held that a warrant not being a "summons, notice or order," does not come within that section, and accordingly that the offence of absconding by an offender against whom a warrant has been issued is not punishable under the section.—*Queen* v. *Omesh Chunder Ghose*, 1 Wym. Cr. 61 (S. C.) 5 W. R. Cr. 71, and Mad. H. C. Ruling, 21st April 1866, *Weir*, 33 *Reg.* v. *Anu Jan*, 7 N. W. P. 302. Section 172 applies to a witness.—*Hossein Manjee*, 9 W. R. Cr. 70. See ss. 188 to 190 of the Penal Code. The proper course in case of disobedience to a warrant, is to proceed under this and next succeeding sections.

If a person having concealed himself before process issues continues to do so, he absconds.—*Srinavasa Ayyangar* v. *Queen*, I. L. R. 4 Mad. 393. See judgment of TURNER, C.J., as to the meaning of the term "abscond."

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made : and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate *or Chief Presidency Magistrate* [Act X of 1886, s. 4] within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure ; or

(*b*) by the appointment of a receiver ; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf ; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made

through the Collector of the district in which the land is situate, and in all other cases—

(*e*) by taking possession : or

(*f*) by the appointment of a receiver ; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf ; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a Receiver appointed under this section shall be the same as those of a Receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government ; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

The first two paragraphs of this section embody the provisions contained in paras. 1 and 2 of s. 172, and paras. 2 and 3 of s. 353 of Act X of 1872. The provisions as to the attachment of debts and other moveable property are new, as are the provisions as to the appointment, powers and duties of a Receiver. Compare the last clause of s. 525, *infra*, as to the sale of perishable property. See also Act IV of 1877, ss. 68, 137.

Fees.—The fee for a warrant of attachment in Bengal and Assam is Re. 1. Where it is necessary to place officers in charge of property attached, 4 annas per diem is chargeable for each officer so employed.—*Cal. H. C. C. O., 2nd April and 17th November*, 1879 ; *Wilkins*, p. 80. See further note to s. 68.

It will be noticed that, before proceeding under this section, a proclamation must have been issued ; see the case of *Shewdyal Singh* v. *Oriban Singh*, 6 W. R. Cr. 73, where it was decided that, before the passing of an order declaring the property of an accused person, who cannot be found to be at the disposal of the Government, there must be a proclamation specifying the time within which such person is required to appear, and that before a Magistrate can issue such a proclamation, he must be satisfied that such person has absconded or is concealing himself for the purpose of avoiding the service of the warrant.

A Magistrate has no power to order the attachment of any property unless it belongs to the party absconding, and he should be most careful not to interfere with or disturb the possession of third persons. But when claimants have held back for six months, a Magistrate would probably be considered to be perfectly justified in presuming that the property was not theirs, and in leaving them to vindicate any right they might have in a civil suit. He may fairly say that he is not bound to try a question which is more properly one for a Civil Court.—*Reg.* v. *Chumroo Roy*, 7 W. R. Cr. 35 : see also *In re Chunder Bhon Singh*, 17 W. R. Cr. 10.

The claims of third persons to property attached under these sections cannot be investigated by the Magistrate.—*Reg.* v. *Chumroo Roy*, 3 Wym., Cr. Rul., 20; (S. C.) 7 W. R. Cr. 35 : *Emp.* v. *Sheodihal Roy*, I. L. R. 6 All. 487. A person whose property has been attached ought to be permitted to show cause against the confiscation of his goods.—*In re Jhandoo Singh*, 5 W. R. Cr. 8. The declaration of forfeiture directed to be made was, PHEAR, J., thought, in a case under s. 184 of Act XXV of 1861 (s. 88 of this Code), intended to be in furtherance of a matter of procedure, not simply as a mode of punishment for a contempt of process. "In this view," his Lordship said, "I think that, if it is not made before the person affected by the proclamation has come in, or has been brought in, it ought not to be made at all. Because by that time its purpose has been effected, though even possibly by other means than that of the process which was evaded."—*In re Ram Kishore Sein*, 10 B. L. R. Appx. 18 : (S. C.) 19 W. R. 12.

In the case of *Golum Abed* v. *Toolseeram Bera*, I. L. R. 9 Cal. 861 : (S. C.) 12 C. L. R. 441, the Court, PRINSEP and O'KINEALY, JJ., held, that after the date of an attachment under this section and during its continuance, no title could be conferred by an attachment and sale subsequently made in execution of a money-decree.

For forms of order of attachment and warrants of attachment to compel appearance under this section, see Sched. V, Form 6.

The following rule is in force in Bengal as to the sale of revenue-paying land attached by a Magistrate upon the absconding of an accused person :—

The Board of Revenue have, at the instance of the Court, issued the following instructions (*vide* Board's C. O. No. 9 of July 1878) to Collectors in connection with the attachment and sale, under s. 88 of the Criminal Procedure Code, of land paying revenue to Government :

"The High Court have represented that Collectors of districts, who hold sales of land paying revenue to Government from time to time, could more conveniently and advantageously hold sales of such attached land as is above referred to, situated within their jurisdictions, than could Magistrates, especially in cases where the Magistrate is in another district. The Board therefore direct that Collectors will, in future, comply with the requisitions of Magistrates to hold sales in such cases ; and it is further directed that, in these cases, the procedure in respect of the advertisement,

sale, and delivery of possession, in the case of sales in execution of decrees of Civil Courts under Act XIV of 1882 (The Code of Civil Procedure), may be strictly followed "—*C. O. No. 7 of 17th August*, 1878, *Wilkins*, p. 107.

Proceedings under this section are not judicial proceedings.—*Emp* v. *Sheodihal Roy*, I. L. R. 6 All. 487.

Whoever being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, is punishable under s. 176 of the Indian Penal Code. See s. 45, *supra*, and *In re Pandya Nayak*, I. L. R. 7 Mad. 436.

Restoration of attached property

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 88 appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

As to appeal, see s. 405, *infra*.

Any Magistrate has power to restore property attached under this section.—*Schedule III* 4, *cl.* (6).

When a person against whom a proclamation has been issued comes in, he should be asked whether he had really absconded and concealed himself, so that he may explain his absence.—*Sheolyal Singh* v. *Girban Singh*, 6 W. R. Cr. 73, and see *Re Bishonath Sircar*, 3 W. R. Cr. 63.

A Magistrate has no power to order the attachment of any property unless it belongs to the party absconding, and he should be most careful not to interfere with or disturb the possession of third persons. But when claimants have held back for six months, a Magistrate would probably be considered to be perfectly justified in presuming that the property was not theirs, and in leaving them to vindicate any right they might have in a civil suit. He may fairly say that he is not bound to try a question which is more properly one for a Civil Court.—*Reg.* v. *Chumroo Roy*, 3 Wym. Cr. Rul. 20 (S. C.) 7 W. R. Cr. 35; see also *In re Chunder Bhon Singh*, 17 W. R. Cr. 10. See further note to preceding section.

Where property which has become at the disposal of Government, no title can be conferred after the date and during the continuance of the attachment by an attachment and sale subsequently held in execution of a decree.—*Golam Abed* v. *Tooleram Bera*, I L. R. 9 Cal. 861 (S. C.) 12 C L. R. 411.

D.—Other rules regarding Processes.

Issue of warrant in lieu of or in addition to summons

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

For form of warrant, see Sched. V, No. 7.

A Magistrate ought only to issue a warrant for the apprehension of a witness when he sees reason to believe that a witness will not attend to give evidence unless he is compelled to do so.—*In re Mohesh Chunder Banerjee*, 4 B. L. R. App 1. Due service of the summons in such a case must be proved (*In re Abdoor Ruhman*, 7 W R Cr. 37, and the Court must be satisfied that the summons has been or will be disobeyed (*Reg.* v. *Sutherland*, 14 W. R. Cr. 20) before issuing a warrant of arrest.

The section does not authorize the committal of a witness Witnesses therefore brought up under a warrant of arrest should not be treated as criminals, but should be dealt with simply as persons arrested on civil process.—*Cal. H. C. C. O No* 21 *22nd November*, 1864, *Wilkins*, p. 107.

The forms of warrants prescribed by the Code should be strictly adhered to.—*Cal. H. C. C. O. No.* 21, *22nd November*, 1864.

Care should be taken that a warrant which always implies personal arrest and restraint, never goes forth when a summons to attend would be sufficient for the ends of justice; and any attempt to coerce or restrain a party who has been summoned only should be checked and punished.—*Smyth*, p. 93.

Absconding to avoid service of a summons, notice, or order proceeding from a public servant is punishable under s. 172 of the Indian Penal Code, and non attendance in obedience to summons, notice, order, or proclamation under s 174 of the same Code. As to what is absconding see judgment of TURNER, C. J., in *Srinivasa Ayyangar* v. *Queen*, I. L. R. 4 Mad. 393, p. 397. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by s 69 or s 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.—*S. 74, supra.* The affidavit mentioned may be attached to the duplicate of the summons and returned to the Court.—*S. 74, supra.*

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant, directing that such person be arrested and produced before him.

Provisions in this chapter generally applicable to summonses and warrants of arrest

93. The provisions contained in this Chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Summons to Jurors and Assessors under s. 326 must apparently be served under this Chapter.

Language to be used in Warrant of Arrest.—Warrants of arrest issuing out of a Magistrate's Court should be written "in the language in ordinary use in the district in which it is held,"—that is to say (with certain exceptions), the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for execution to the Magistrate of a district where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language or into English. Moreover, in such cases it would be proper that the warrant should always be accompanied by a letter in English requesting its execution.—*Cal. H. C. C. O. No.* 3 *of* 25*th July* 1872; *Wilkins*, p. 107.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to Produce.

Summons to produce document or other thing

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause

such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

It should be remembered that a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.—*Evidence Act, 1 of* 1872, *s.* 139.

The sections of the Evidence Act referred to in the last clause are as follows :—

Section 123.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Section 124.—No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

In the case of the *Nizam of Hyderabad* v. *Jacob*, I. L. R. 19 Cal. 52, an order was passed directing that certain Government currency notes alleged to have been part of the property said to have been misappropriated should be produced.

A Magistrate requiring the production in evidence of documents recorded in a Court of Justice or in the custody of any public officer, should, in his communication to such Court or officer, state clearly whether he requires the entire record or any particular paper or papers; also at what time and place the papers, if not previously sent by post, must be produced; and whether any subordinate officer will be required to attend for the purpose of proving them. The communication should be signed and sealed in the same way as a summons. As a rule, it is not desirable that a Magistrate should send for original papers in cases in which copies will serve the purpose, and in which the person requiring the production of the papers is in a position to obtain certified copies. *Bom. H. C. Cir. No.* 45, *Gazette*, 1879, pp. 471—473.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

The power of requiring the Telegraph Department to deliver up documents is new.

The only Magistrate in Presidency-towns who can require the delivery of documents from Postal or Telegraph authorities is the Chief Magistrate.

B.—Search-Warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed, will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

If any Magistrate, not being empowered by law, issues a search-warrant for a letter in the Post Office, or telegram in the Telegraph Department, his proceedings are void.—See s. 550 (*b*), *infra*.

It is essential to the legality of a search-warrant that the production of some specified or distinct thing or object which may be deemed essential to the inquiry and to the conviction of the accused is desired.—*Mahomed Zachariah* v. *Ahmed Mahomed*, I. L. R. 15 Cal. 109. The Magistrate alone is to determine whether the production of the particular thing is essential.—*Reg.* v. *Syed Hossein Ali Chowdhry*, 8 W. R. Cr. 74.

In England the Courts have constantly refused to compel discovery in criminal cases on the ground that no man should be compelled to produce evidence which will criminate himself. Under this section a Court has power by a search-warrant to enforce the compulsory production of an accused's documents. On such documents being produced the Magistrate has power to allow inspection to the prosecution—*Mahomed Zachariah* v. *Ahmed Mahomed*, I. L. R. 15 Cal. 109, but the inspection must be limited to the documents named in the search-warrant.—*Ibid.* The warrant in all cases should specify clearly the documents or other things required.—*Ibid.*

It is not obligatory upon a Magistrate to wait until a preliminary inquiry has been held, and all the witnesses for the prosecution are examined and cross-examined before issuing a search-warrant. He is entitled to act upon information which he considers credible provided that there is a complaint before him and the complainant is examined by him in the manner provided by the Code.—*Emp.* v. *Mahant of Tirupati*, I. L. R. 13 Cal. 18.

It seems to have been doubted whether an order for the issue of a search-warrant would be good where no summons had been issued in the first instance and there was nothing to indicate that there was reason to believe that the documents or other things required would not be produced upon summons.—*Mahomed Zachariah* v. *Ahmed Mahomed*, I. L. R. 15 Cal. 109, *per* GHOSE, J.

The provisions of ss. 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under s. 96, s. 98 or s. 100.—S. 101, *post*. The provisions in these sections relate to the execution of warrants of arrest.

A search-warrant should, except under special circumstances, be executed between sunrise and sunset. If, for special reasons, a search-warrant be executed between sunset and sunrise, such reasons must be reported to the District Superintendent for the information of the Magistrate having jurisdiction.—*Bengal Police Manual*, 2nd Ed., p. 402.

For form of warrant, see Sched. V, No. 8.

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

For form of warrant, see Sched. V, No. 8.

Search of house suspected to contain stolen property, forged documents, &c.

98. If a District Magistrate, Subdivisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging, or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified, or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

The provisions of this section with respect to—

(*a*) *counterfeit coin,*

(*b*) *coin suspected to be counterfeit, and*

(*c*) *instruments or materials for counterfeiting coin shall so far as they can be made applicable apply respectively, to—*

(*a*) *pieces of metal made in contravention of the Metal Tokens Act* 1889, *or brought into British India in contravention of any notification for the time being in force under s.* 19 *of the Sea Customs Act*, 1878;

(*b*) *pieces of metal suspected to have been so made or to have been so brought into British India, or to be intended to be issued in contravention of the former of these Acts, and*

(*c*) *instruments or materials, for making pieces of metal in contravention of this Act*—Act I of 1889, s. 7.

See s. 101, which applies, ss. 43, 75, 77, 79, 82, 83 and 84, so far as may be, to search-warrants issued under this section.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

C.—Discovery of Persons Wrongfully Confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined, and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

This section is new. No such power as is given by it is supposed to have existed in India, except in the Presidency-towns, where the High Courts formerly issued under Act X of 1875 directions in the nature of a *habeas corpus*. See s. 491, *post*, for the powers which the High Courts at Calcutta, Madras, and Bombay now have to issue directions of the nature of *habeas corpus*.

See also s. 551, *post*, as to the powers of a Presidency Magistrate or District Magistrate to compel the restoration of abducted females.—*Abraham* v. *Mahtabo*, I. L. R. 16 Cal. 487. As to what amounts to wrongful confinement, see ss. 339 and 340 of the Indian Penal Code.

D.—General Provisions relating to Searches.

Direction, &c., of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98 or section 100.

Persons in charge of closed place to allow search.

102. Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingressinto such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Section 48 referred to in this section has not been made to apply specifically to the Police in Calcutta and Bombay, and apparently does not apply to them. Under ss. 96, 98 and 100, however, Presidency Magistrates have power to issue search-warrants to the Police. In case of search-warrants, therefore, there seems to be no doubt that the Police in Calcutta and Bombay are to be guided by the provisions of s. 48. See notes to s. 48, *supra*.

Search to be made in presence of witnesses.

103. Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

The search-warrant should, except under special circumstances, be executed between sunset and sunrise.—*Bengal Police Manual*, 2nd Edition, p. 402. In Bengal, the following directions have been circulated for the guidance of Police-officers acting under this section. The sending for shopkeepers, selected arbitrarily by the Police, and making them witnesses to the search of the houses of accused persons, is a fruitful source of oppression and extortion. It is difficult to prescribe rules for the selection of witnesses to the search of houses for stolen property, but District Superintendents can easily ascertain by questioning the witnesses sent in whether they have been unfairly selected. One respectable householder should not be summoned a second time till his neighbours have had their turns, unless good reason be given for their exemption. Respectable shopkeepers are just as liable to be summoned as other respectable inhabitants of the place.—*Bengal Police Manual*, 2nd Edition, p. 403. As to other searches by the Police, see ss. 165 and 166, *post*, and the notes thereto.

Power to impound document, &c., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

As to search-warrants, see ss. 96—99, *ante*.

PART IV.

PREVENTION OF OFFENCES

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction

106. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Subdivisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

This section corresponds with s. 489, para. 1, and s. 490, cl. 1, of Act X of 1872; with ss. 140 and 141 of Act X of 1875; and with ss 208 and 209 of Act IV of 1877.

For form of bond to keep the peace, see Sched. V, No. 10.

The clause as to "any person accused of committing criminal intimidation by threatening injury to person or property" is new, but it must be borne in mind that it is not in all cases where a person is convicted of criminal intimidation under s 503, but only where the intimidation is by threatening injury to person or property that the Court on conviction may require a bond to be executed. The clause has apparently been inserted in the present Code in consequence of the decision in the case of *Emp* v. *Rughubar*, I. L R 2 All. F. B. 351, where the words in s. 489 of Act X of 1872—"taking other unlawful measures with the evident intention of committing" a breach of the peace—were held not to include the offence of intimidation by threatening to bring false charges.

The last clause of the section, which is also new, is in accordance with the case of *Queen* v. *Ghasi*, N. W. P., 1875, p. 875.

Under the three former Acts, the period for which a bond might be ordered to be given was a period not exceeding one year in case of an order passed by a Magistrate, and three years in case of an order passed by a High Court or a Court of Session.

The section applies only in cases of conviction of persons accused of the offences mentioned. See *Reg* v. *Hur Kunari Dassia*, 24 W. R. Cr. 10. So that when the accused is acquitted, it is not competent to the Court to call upon him to give security.—*Mad. H. C*, 19*th May*, 1874; *Weir*, p 24 In *Yar Muhammad*, Punjab Rec., 1890, p. 6, the Court held that the offence of being an armed member of an unlawful assembly is not an offence within the section. The order of a Magistrate, who convicted the accused of criminal trespass, directing him, on the expiration of his sentence, to execute personal recognizances to keep the peace, was upheld as legal and necessary, as the acts of the accused seemed to show an intention of committing a breach of the peace.—*Queen* v. *Gendoo Khan*, 7 W R 14 See *Re Jhapoo*, 20 W R 37.

In the case of *Umda Khanum*, 3 C. L R, 72, a Joint Magistrate tried certain persons on a charge of riot and assault, but having "grave doubts as to their guilt," discharged them, but at the same time and without taking any evidence required one of those persons as well as the witness of the complainant and others who appeared for the complainant to give security to keep the peace. The High Court, in setting aside the order as illegal, made the following remarks "A Magistrate must have a report or information which appears to be credible and which he believes before he can issue a summons calling upon any person to show cause why he should not be bound over to keep the peace, but he cannot bind over a person until he has adjudicated on evidence before him, that is, upon evidence taken in the regular way in the presence of the person who is bound over. . . If, however, any person has been convicted of an offence attended with violence of the nature specified in s 491 (s. 106 of the present Code), the Magistrate is competent, in addition to the sentence or order passed, to direct that the person so convicted shall give security In such a case, too, the Magistrate has convicted on evidence before him (that is the person concerned) that facts are

established requiring security because he has convicted such person of a breach of the peace or an intention to commit a breach of the peace." See *Run Bahadoor Sing* v. *Ranee Tilsooree Koer*, 22 W. R. Cr. 79.

Powers of Appellate Court.—In the case of *Emp* v *Kanta Prasad*, I. L. R. 4 All. 212, the Full Bench at Allahabad held, that a Magistrate when exercising the powers of an Appellate Court, is competent to make an order requiring the appellant to furnish security for keeping the peace, under the corresponding section of Act X of 1872 But in the case of *In re Astu* I Lr R. 16 Cal 779, it was held by the Calcutta High Court that the Magistrate of the District when acting as an Appellate Court is not competent to make an order under s. 106. In the Punjab Court also it has been held that an Appellate Court which does not convict an accused person but merely upholds a conviction can not demand security.—*Nuthan Sang*, Punjab Rec , 1888 p. 43. The section is precise as to the order being made at the time of passing sentence If no such order is then made, subsequent proceedings under this Chapter ought to be taken under s. 107, and the parties summoned to show cause.– *Re Gobind Soobodhee*, 15 W R Cr. 56 *Emp.* v. *Rahim Bakhsh*, Punjab Rec , 1883, p. 8; *Queen* v. *Powell*, 3 N. W. P. 96 See *Jan Mahammed* v. *Emp* , Punjab Rec., 1884, p. 38.

If any person in respect of whom an order requiring security is made under this section is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence. In other cases such period shall commence on the date of such order —*S.* 120, *post*. See s. 349, *post*.

No order for security can be made under the section where there is only a possible apprehension of a future breach of the peace.—*Reg.* v. *Abdul Huq*, 20 W R. Cr. 57. Where such breach appears to the Court to be likely, proceedings may be taken under s. 107. See *Queen* v. *Hur Kumari Dassia*, 24 W R. Cr. 10.

Under s. 15, *supra*, except as otherwise provided by any order of the Local Government (see s. 16), a Bench of Magistrates, any one of whom is a Magistrate of the first class, shall be deemed to be, for the purposes of this Code, a Magistrate of that class, and as such would probably be held to have jurisdiction to make an order under this section. See *Queen* v. *Bebbeki Pathak*, 21 W. R. Cr. 12; and *In re Baroda Prosunno Chuckerbutty*, 2 C. L. R. 348.

Under s 513, *infra*, a deposit of money or Government promissory notes may, except in the case of a bond for good behaviour, be taken in lieu of a bond.

Section 123, *infra*, provides for the imprisonment of the accused on default in finding securities under this section.

Fees.—In exercise of the powers conferred by s. 35 of the Court Fees Act (VII of 1870), the Governor General in Council was pleased to remit, in the whole of British India, the fees chargeable on security bonds for keeping the peace, or for good behaviour of persons other than the executants.—*Gazette of India*, 1880, p. 223.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases

107. Whenever a Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace, or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

This section corresponds with s. 491, and the last para of s. 502, of Act X of 1872, and with ss 215 and 231 of Act IV of 1877. The provisions, however, of s. 502 last para , of Act X of 1872, that proceedings could be taken in any district where the person it is desired to bind may be, have been omitted. The jurisdiction, therefore, of the Courts has been somewhat narrowed

If any Magistrate, not being empowered in that behalf, demands security to keep the peace, his proceedings are void—*Section* 530 (*c*), *infra*.

A Magistrate, it was held by a Full Bench at Allahabad, has no power under this section to issue process to a person not residing within his district.—*In re Jai Prakash Lal*, I. L. R 6 All. (F B.) 28 *In re Abdul Aziz*, I. L R 14 All. 49. So in Calcutta it was held that this section does not empower a Magistrate to issue process on persons not residing within the limits of his district.—*In re Rajendro Chundra Roy Chowdry*, I. L R. 10 Cal. 737 *In re Charoo Chundra Mullick*, 10 C. L. R 430. The proper course for a Magistrate to pursue, where he believes that certain persons who are resident beyond the limits of his district are likely to commit a breach of the peace, is to cause information of the fact to be given to the Magistrate within whose district such persons reside, so that proceedings may be taken against them by a Court which has jurisdiction —*In re Rajendra Chundra Roy Chowdhry*, I. L. R. 11 Cal. 737 The Court in *In re Dinno Nath Mullick*, I L. R. 12 Cal. 133, followed the last case and *In re Jai Prakash Lal*, I. L. R. 6 All. (F. B) 26. The latter was a case in which a Magistrate of the Ghazipur District, on having received a police report that

the servants of the Maharajah of Dumraon in the Shahabad District were preparing to sow certain land in the Ghazipur District—an act which would likely cause a breach of the peace issued a summons calling on the Dewan of the Maharajah to show cause why he should not execute a bond to keep the peace

The word 'wrongful' has been inserted apparently, in consequence of the case of *Kashi Chunder Dass* v *Hur Kishore Dass* 19 W R Cr 47 (8 C) 10 B L R 441, where the words do any act that may probably occasion a breach of the peace' which occurred in s 491 of Act X of 1872 were held to mean a wrongful act and not one which a person may lawfully do Thus a Magistrate cannot prevent a person from building a house adjoining that of another on the ground that the droppings from the roof of the house if completed will fall upon the adjoining house and be likely to cause a breach of the peace *Ibid* See *Ram Kumar Banerjee* v *Rajah Gopal Sing Deb* 17 W R Cr 54 where it was held illegal to take recognizances from one person to prevent another committing a breach of the peace A non resident zemindar cannot be bound over to keep the peace because his local agents are committing acts likely to cause a breach of the peace —*In re Charoo Chunder Mullick* 10 C L R 430 Singing in the street is not in itself a wrongful act nor would a possible obstruction in the streets by crowds collecting constitute a wrongful act by the singer, likely to lead to a breach of the peace —*Gulam Nabi* Punjab Rec 1889, p 58

Now, by s 112 when a Magistrate acting under this section deems it necessary to require any person to show cause he must make an order in writing setting forth the substance of the information received and other particulars as to the bond to be executed If that person is not in Court and a summons or warrant has therefore to be issued under s 114 *post*, a copy of the order made under s 112 must be served with the summons or warrant

Under s 117 *infra* the Magistrate must inquire into the truth of the information upon which he has acted If he does not find that a person is himself likely to commit a breach of the peace, he cannot order him to furnish security and hold him by anticipation, responsible for the result of resistance to acts which are not shown to be illegal or likely to induce a breach of the peace — *In re Sheo Surn Lall*, 3 C L R 280 See *In re Kashi Chunder Dass*, 10 B L R 441 (8 C) 19 W R 47

Onus —The *onus* of proof lies upon the prosecution to establish circumstances justifying the action of the Magistrate in calling upon persons to furnish security —*Emp* v *Abdul Kadir* I L R 9 All 452 *Dunne* v *Hem Chunder Chowdhry* 4 B L R (F B) 46 *Reg* v *Nirunjun Singh* N W P H C R 1870, p 4 It Substantial grounds for an apprehension of a breach of the peace must be established by proof of facts against each person implicated What the nature of the facts should be depends upon the circumstances of each case but where the nature of the Magistrate's information requires it over acts must be proved before an order can be passed under s 118 and such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace —*Emp* v *Abdul Kadir* I L R 9 All 452 see *Rej* v *Abdoot Huq* 20 W R Cr 57 *Goshain Luchman Pershad Pooree* v *Pohoop Narain Pooree* 24 W R Cr 30 *Raja Run Bahadur* v *Ramee Tillessun ee Koer* 22 W R Cr 79 *In re Kashi Chunder Doss*, 10 B L R 441 (8 C) 19 W R Cr 47

According to Expl I to s. 491 of Act X of 1872 a summons to show cause might be issued upon 'any report or other information which appears credible and which the Magistrate believes and it was held that a petition which was declared by the Police to be false, and was unsupported by any complaint or solemn affirmation, did not come within these words so as to warrant a Magistrate demanding security to keep the peace *Chamaro Malo* v *Kashi Chunder Lalla* 8 W R Cr 85 Conversations out of Court with persons however respectable are not legal or proper materials upon which Magistrates should adopt proceedings under this section or s 110 —*Emp* v *Babua* I L R 6 All 132 In that case a Magistrate acted "to a great extent upon information which had reached him from trustworthy sources as to the reputed character and habits of the accused In his order he stated "Not one but nearly every respectable city resident who has spoken to me on the subject has condemned this Babua (accused) as by repute the biggest black character in the city and to such an extent has his influence made itself felt for evil that one and all my informants refuse to come forward and give evidence against the accused for fear of consequences" The Magistrate's order binding over the accused, which was confirmed by the Sessions Judge was set aside by the High Court

A statement that the complainant expected that the defendant might at any time make an attempt on his person or property, if believed in is sufficient information for the Court to take proceedings upon —*Reg* v *Aristandro Roy* 7 W R Cr 30

Information of the kind mentioned in s 107 must be of a clear and definite kind directly affecting the person against whom process is issued and it should disclose tangible facts and details so that it may afford notice to such person of what he is to come prepared to meet —*In re Jai Prakash Lal* I L R 6 All (F B) 26 p 30 *per* STRAIGHT Offg C J *Emp* v *Shimbhu Nath* Punjab Rec 1888 p 40 See *Emp* v *Nathu* I L R 6 All 214 The provision in s 117 as to the admission of evidence of general repute is not applicable under this section— *Banarsi Das*, Punjab Rec 1888 p 90

Procedure —Where an order has been passed requiring more persons than one to show cause why they should not severally furnish security for keeping the peace the provisions of s 239 read with s 117 are applicable subject to such modifications as the latter section indicates and to such procedure as the exigencies of each individual case may render advisable in the interests of justice A joint inquiry therefore is not *ipso facto* illegal though it is an irregularity which according to the particular circumstances may or may not be covered by s 537 *Emp* v *Abdul Kadir* I L R 9 All 452 see *Emp* v *Lochan*, Weekly Notes, 1881 p 28, cited in the last case and *Hossein Buksh* v *Emp* I L R 6 Cal 96

If proceedings are instituted against more persons than one it is essential to establish what each individual implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace, and in holding such inquiry it is improper to treat what is evidence against

one of such persons as evidence against all without discriminating between the cases of the various persons implicated.—*Emp.* v. *Abdul Kadir*, I. L. R. 9 All. 452. See *Emp.* v. *Nathu*, I. L. R. 6 All. 214.

The report of a Police-officer (*In re Brindabun Shaha*, 10 W. R. Cr. 41) and the report of a Subordinate Magistrate (*Ex-parte Nellikel Edathil Achen*, 2 Mad. H. C. R. 240: *Reg.* v. *Jivanji Limji*, 6 Bom. H. C. R. Cr. 1) have been held to be sufficient information upon which a Magistrate might issue a summons. But the act, of which information is given and in respect of which security to keep the peace is required, must be an act which is shown to be in contemplation at the time of the information given, and not merely one the repetition of which may be expected or apprehended from past misconduct of the kind without anything further.—*Mad. H. C. Pro.*, 29*th August*, 1876; *Weir*, p. 37. See *In re Sheo Surn Lall*, 3 C. L. R. 280. But although the reports of a Police-officer or of a Subordinate Magistrate are sufficient information upon which a Magistrate may issue a summons, it need hardly be pointed out they are not evidence upon which he can determine, under s. 117, whether it is necessary to take a bond to keep the peace or for good behaviour. See *Reg.* v. *Jivanji Limji*, 6 Bom. H. C. R. Cr. 1: and *Reg.* v. *Dalpatram Pemabhai*, 5 Bom. H. C. R. Cr. 105.

Where a witness for the defence, in a case of rioting, admitted being present at or near the scene of the riot, and denied that the accused took part in it, the Magistrate, finding the accused guilty and without any further proceedings, called upon both the accused and his witness to enter into bonds to keep the peace for a year, it was held that his procedure was illegal as far as the witness was concerned.—*Queen* v. *Kadar Khan*, I. L. R. 5 Mad. 380.

A District Magistrate has power under s. 528, *post*, to withdraw a case falling under this section.—*In re Divendra Nath Shanial*, I. L. R. 8 Cal. 851.

Where a Magistrate bound down 26 persons to keep the peace after recording evidence as to 11 of them only, the order was set aside by the High Court as to the persons not affected by the evidence.—*In re Kassim Biswas*, 10 C. L. R. 335.

Under the Code of 1861 it was held, that it should appear, on the face of the order of the Magistrate, that he had received credible information that there was a likelihood of a breach of the peace.—*In re Birreshuree Pershad*, 6 W. R. Cr. 93.

It is not necessary to call witnesses in support of an information laid before a Magistrate previous to issuing a summons to show cause under this section.—*In re Mullick Fuseerun*, 11 W. R. Cr. 6.

The provisions of s. 350, *post*, apply to an inquiry under this section.—See note to that section, *post*.

Accused Person.—In the case of *Buroda Kant Roy* v. *Korimuddi Moonshee*, 4 C. L. R., p. 454, WHITE, J., was of opinion that a person brought before the Court under this section was in substance "accused" of being likely to commit a breach of the peace or of doing an act which is likely to produce a breach of the peace. But in fact no offence is charged.—*Emp.* v. *Abdul Kadir*, I. L. R. 9 All. 452, p. 457: *Emp.* v. *Kanthaia*, I. L. R. 7 All. 67. It would follow therefore that he is a competent witness on his own behalf. See note to s. 488 *infra*, and *Noor Mahomed* v. *Bismilla Jan*, I. L. R. 16 Cal. 781.

Procedure of Magistrate, &c., not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may, in his discretion, detain such person in custody until the completion of the inquiry hereinafter prescribed.

Under the previous sections of this Chapter, the Magistrates empowered to act are Presidency Magistrates, District Magistrates, Subdivisional Magistrates, and Magistrates of the first class.

If any Magistrate, not being empowered on that behalf, demands security to keep the peace, his proceedings are void.—*S.* 530 (*c*), *infra*.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) thatt here is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

This section corresponds with paras. 1 and 4 of s. 504, and para. 2 of s. 515, of Act X of 1872, and with ss. 212 and 213 of Act IV of 1877.

For form of bond for good behaviour under this section, see Sched. V, No. 11.

Clause (*a*) seems to deal with what was termed under the Code of 1872 'lurking within the jurisdiction.'

See ss. 55, 56, *ante*, as to powers of Police to arrest under the circumstances referred to in this section.

Separate proceedings should be taken against each person ordered to find security, unless it is clear that there was such a connection between the parties as indicates the necessity of a contrary course.—*Mad. H. C. Pro., 17th March*, 1863; *Weir*, p. 36. See *Emp.* v. *Nathu*, I. L. R. 6 All. 214: *Emp.* v. *Abdul Kadir*, I. L. R. 9 All. 432. See notes to s. 107, *supra*.

Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet.—*Emp.* v. *Ishwar Chundra Sur*, I. L. R. 11 Cal. 13.

After the expiration of the term of confinement in default of security, a second security cannot be demanded except upon some new proof of bad livelihood.—*In re Juswunt Singh*, 6 W. R. Cr. 18.

If any Magistrate, not being empowered in that behalf, demands security for good behaviour, his proceedings are void.—*S.* 530 (*d*), *infra*.

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, *or* Subdivisional Magistrate, or *a* Magistrate of the first class, specially empowered in this behalf by the Local Government, receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property, knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

The words in italics have been inserted by Act X of 1886, s. 5.

For form of bond for good behaviour under this section, see Sched. V, No. 10.

Unlike the corresponding sections of the former Acts, this section omits power to require security from persons "of notoriously bad livelihood or of a dangerous character," or of a character "so desperate and dangerous as to render their release without security hazardous to the community." It also loses sight of the distinction drawn in ss. 505 and 506 of Act X of 1872 between men who are robbers, etc., by repute, and men who are proved to be habitual robbers, etc.

Where the only information set forth in the order refers to an apprehended breach of the peace, the Magistrate has no authority whatever to resort to this section.—*Emp.* v. *Bahua*, I. L. R. 6 All. 132. He must proceed under s. 107. Under that section security can only be taken for one year. Under this section it can be taken for three years.

Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet.—*Emp.* v. *Ishwar Chunder Sur*, I. L. R. 11 Cal. 13.

The object of this Chapter, it is to be borne in mind, is the prevention, not the punishment, of crime. It is solely for the purpose of securing good behaviour, and any attempt to use it for the punishing of past offences is wrong and not sanctioned by law.—*In re Umbica Proshad*, 1 C. L. R. 208, *per* MACPHERSON and BIRCH, JJ. When a charge of a specific offence is under trial, proceedings under this Chapter should not be taken.—*Ib.*: *In re Juggut Chunder Chuckerbutty*, I. L. R. 2 Cal. 110: *Pro.*, 4 Mad. H. C. R. Appx. 441: *In re Pedda Siva Reddi*, I. L. R. 3 Mad. 238. The mere fact that a person from whom security is required has been previously convicted of offences against property is not sufficient to justify proceedings under this section (110), unless there be additional evidence that the person complained against has done some act or resumed avocations indicating on his part an intention to return to his former course of life.—*In re Haidar Ali*, I. L. R. 12 Cal. 520. There the High Court remarked (p. 524): "In this case, the person from whom security was required had only recently been released from jail, and we think it was rather

the duty of the Police to assist him in finding honest employment than to apply to have him incarcerated for a further period merely on the ground of his previous convictions." See also *In re Raja Valad Hussein Saheb*, I. L. R. 10 Bom 174 *Emp.* v. *Murli*, Punjab Rec., 1885, p 89.

In *In re Padda Siva Reddi*, I. L. R. 3 Mad. 238, the Court (TURNER, C. J., and MUTHUSAMI AYYAR, J.) said "The power given by the 505th section (s 110 of this Code) is one which should always be exercised with nice discretion by the Magistracy, but its exercise is not to be confined to cases in which positive evidence is forthcoming of the commission of crime by the persons against whom it is sought to enforce the law. The power is a *preventive* and not *punitive* power." Although whom witnesses are examined as to *general character*, their testimony is not of much *value* as to the habits of a suspected person, unless they can, in support of their opinion, adduce instances of the misconduct imputed, when the question is only as to repute, the evidence of witnesses, if reliable, is not without value, though they may not be able to connect the suspected person with the actual commission of the crime.—*Ib.*

Proceedings under this section it has been held that conversations out of Court with persons however respectable are not legal or proper material to act upon. See th remarks of STRAIGHT, J., in *Emp.* v. *Bahna*, I. L. R 6 All 132, p. 136. The information to be required in proceedings for taking security for good behaviour by a Magistrate before issuing an order under s. 112 may be, to some extent, of a hearsay and general description, but when the party to whom the order is directed appears in Court in obedience to such order, the inquiry must be conducted on the lines laid down by s. 117. It is not because a man has a bad character that he is therefore necessarily liable to be called upon for sureties of the peace or for good behaviour. There must be satisfactory evidence in the one case that he has done something, or taken some step, that indicates an intention to break the peace, or that he is likely to occasion a breach of the peace, and in the other, that he is within the category of persons mentioned in this section (110), the determination of which question must always be guided by the considerations pointed out in *Emp.* v. *Nawab*, I. L. R 2 All 835.—*Ib.*

Amount of Security.—The amount of security to be furnished should be such as to afford the person a fair chance of complying with the order, so as not to make the alternative of imprisonment unavoidable.—*Emp* v. *Dedar Sircar*, I. L. R. 2 Cal. 384 (S.C.) 1 C. L. R. 95 *Emp.* v *Rama*, I. L. R. 16 Bom 372. The Magistrate should consider the station in life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment in default is provided as a protection to society against the perpetration of crime by the individual, not as a punishment for a crime committed, and being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition or security.—*Mad. H. C. Pro*, 26th *April*, 1869, 4 Mad H. C. R. Appx. 46; and see *Re Nilmadhub Ghosal*, 19 W. R. Cr. 1 · *Jawaya* v. *Emp.*, Punjab Rec., 1890, p 97.

When the amount of security is *primâ facie* unreasonable, the High Court can call upon the Magistrate to certify the grounds upon which he fixed it.—*Emp.* v. *Dedar Sircar*, I. L. R. 2 Cal. 384 (S C.) 1 C. L. R. 95.

Security of Rs 20,000, in four sureties of Rs. 5,000 each, for one year, or in default imprisonment for the same period, the first two months simply, and the remaining ten months rigorously (*In re Umbica Proshad*, 1 C. L. R. 208), and a recognizance of Rs. 10,000 with two sureties for Rs. 5,000 each (*In re Juggut Chunder Chuckerbutty* I. L. R. 2 Cal 110) were held to be unreasonable.

In the case of *The Emp.* v. *Kala Chand Dass*, 6 C. L R. 128 (S.C.) I L. R 6 Cal 14, each of seven accused persons were ordered to find two sureties to the amount of Rs 500 each; three of them to deposit in cash Rs 1,000 each, two of them Rs 500 each, and the remaining two Rs 250 and in default to have rigorous imprisonment for one year. PONTIFEX and MACDONELL, JJ., held, that it was illegal to require deposits in cash instead of bonds, and that the order as to sureties was prohibitive. PONTIFEX, J., observed —"With respect to the sureties, it (the order) is prohibitive, for it is scarcely likely that fourteen sureties in Rs 500 each would be forthcoming in a place like Bhaokalty. My own experience in Calcutta has shown me, that respectable people in Calcutta, who have to provide sureties upon grants of letters of administration, have to pay heavy sums for the sureties; and I can only suppose that it would be greatly more expensive for reputed *budmashes* to provide sureties for good behaviour. So that it comes to this, that the requirement of two sureties to the amount of Rs 500 each, for each of the defendants, will, in effect, be inflicting a heavy fine upon them in a case only of suspicion and reputation."

In making an order for security to keep the peace, a Magistrate has no right to enforce an arbitrary condition not essential for the object in view,—namely, to restrain a party from the infringement of the law, still less has he a right to impose impossible conditions —*In re Narain Soobodhee*, 22 W. R. Cr 37.

After the expiration of the term of confinement in default of security, a second security cannot be demanded except upon some new proof of bad livelihood.—*In re Jumoont Singh*, 6 W. R. Cr. 18.

Where an accused person was convicted of theft and sentenced to two years' rigorous imprisonment, and was further ordered to enter into his own recognizance for Rs 50, and find two sureties each for a like sum, for his good behaviour for one year after the term of his imprisonment had expired, and in default to suffer rigorous imprisonment for one month, it was held that the latter part of the order was bad —*Tamiz Mandal* v. *Umid Kartgar*, I. L. R 9 Cal. 215. See remarks of SPANKIE, J, in *Emp.* v *Partab*, I. L. R 1 All. 666.

Separate proceedings should be taken against each person ordered to find security, unless it is clear that there was such a connection between the parties as indicates the necessity of a contrary course.—*Mad. H. C. Pro.*, 17th *March* 1863; *Weir*, p. 30. See *Emp* v *Nathu*, I. L R. 6 All. 214. A joint trial is not necessarily illegal but is a mere irregularity which may or may not be cured by s. 537, *post*.—*Emp.* v. *Abdul Kadir*, I. L. R. 9 All. 452.

The order must specify a definite period for which the security is required —*Mad H C Pro*, 8*th April* 1876 *Weir* p 36 *In re Pulla Siva Reddi* I L R 3 Mad 238

Appeal —There is no appeal from an order under this section —See *Balmakund* Punjab Rec, 1889 p 77 *Chand Khan* v *Emp* I L R 9 Cal 878

111 The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874

Proviso as to European vagrants

Under s 517 of Act X of 1872 the provisions generally of the corresponding Chapter of that Act were made not to apply to European British subjects

European subjects may be dealt with under this Chapter in cases not coming within the European Vagrancy Act IX of 1874

By s 5 of that Act the Magistrate or Justice of the Peace shall in case of an apparent vagrant, or in any other case when a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant and if he is satisfied that such person is a vagrant he shall record in his office a declaration to that effect

(1) If he is further of opinion that the vagrant is not likely to obtain employment at once or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect

(2) The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the workhouse and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the workhouse, and to the Governor of the workhouse for receiving and detaining such vagrant

When the officer making the inquiry mentioned in s 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government or (when the vagrant is in any part of the dominions mentioned in s 1) in any place subject to any adjacent Local Government, such officer may in his discretion forward the vagrant to such place in charge of the Police, and draw up an order to that effect Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment —*Act IX of* 1874 *s* 6

Upon his arrival at the place of employment the vagrant shall be taken before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid to whom the order for transmission shall be delivered Such officer shall thereupon to the best of his ability assist the vagrant in seeking employment and may in the meantime if he think fit keep the vagrant in the charge of the Police Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival such officer shall forward him to a Government workhouse in the manner provided by s 5 —*Act IX of* 1874 *s* 7

Vagrant' means a person of European extraction (see s 3 of the Act) found asking for alms or wandering about without any employment or visible means of subsistence —*Act IX of* 1874, *s* 3

112 When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required

Order to be made

Under the previous Acts the circumstances to which this section refers were to be set out in the summons except where the person to whom otherwise a summons would have been issued was in Court Under this Act unless such person is in Court (s 113) a summons or warrant must be issued (s 114) accompanied by the order made

Character and Class of Sureties —Where an order was made by a Magistrate requiring that the accused should give two sureties being persons of respectability and substance not related to him and residing within one mile of his house ' and it appeared that there was no person of respectability within a mile of the house of the accused the High Court expunged the conditions prescribed as being arbitrary —*In re Narain Sooboddhee* 22 W R Cr 47

The provision directing the Magistrate to specify in his order the *character and class* of the sureties required enables the Magistrate for example to require landholders as sureties, and in such case to refuse to accept pleaders or bunyas as sureties

The direction that the order should set out the substance of the information is very important, and ought to be carefully complied with though the omission to comply with it would not be sufficient to justify the High Court in quashing the proceedings unless the petitioner had been prejudiced See *Koonjbehary Chowdhry* v *Khnath Gurain* 15 W R Cr 43 s 537 *infra* *Ataru Begum* v *Unila Khanum* I L R 8 Cal 724 *Reg* v *Gunga Singh* 20 W R Cr 36

In the case of *The Emp* v *Nathu* I L R 6 All 214 a Magistrate ordered 69 persons to show cause why they should not give security to keep the peace The order purported to be made under s 112 the ground of the order being thus stated — From reports made by the Police and the Tahsildar it seems that there is danger of a breach of the public peace by the persons mentioned below because a rival sect is opposed to the celebration of the Rathjattra Mela After an enquiry as against all the accused jointly the Magistrate on the evidence of the Tahsildar and a

Sub-Inspector of Police, ordered that 10 of the accused, who were said to be ringleaders, should enter into bonds with sureties, and the rest should enter into their own recognizances to keep the peace for one year. On reference to the High Court, STRAIGHT, J., set the order aside, because (1) the order did not adequately or properly disclose the substance of the report or information upon which the summons was issued; (2) that the statements of the Tahsildar and Sub-Inspector as to the majority of the persons summoned were too loose to justify a wholesale order for security; (3) that the *mela* only lasting for a fortnight, it was an excessive exercise of power to require all the parties to give security for a year; (4) that there should have been clear and distinct evidence affecting each of the defendants warranting an inference that they were likely to commit a breach of the peace or to [do a wrongful act likely to occasion a breach of the peace. STRAIGHT, J., said:—"Putting aside for a moment the obvious inconvenience, to use the mildest term, of dealing with 69 different persons in one proceeding, his (the Magistrate's) order, as purporting to be prepared under s. 112 of the Criminal Procedure Code, does not adequately or properly disclose the substance of the report or information upon which his summons issued. Parties against whom process is issued. . . . are entitled to something more than a mere assertion in writing by the Magistrate that he has been informed that a breach of the peace is likely to occur, in order to enable them, if they are in a position to do so, to bring evidence to rebut the truth of such information . . . . The provisions of the Code of Criminal Procedure as to finding security for the peace may be easily converted into an engine of injustice and oppression, and this Court is bound to watch over proceedings adopted thereunder with the closest scrutiny. . . . . I do not wish to say a word more than is absolutely necessary, as I am aware that the Magistrate has an exceedingly difficult district to deal with; and I should be sorry in any way to weaken his legitimate authority or action. But the Criminal Procedure Code must not be made use of for the purpose of supplying administrative deficiencies in the shape of an inadequate Police force to keep a place in order." See *In re Kassim Binnas*, 10 C. L. R. 335, where 26 persons were bound over to keep the peace by a Magistrate who recorded evidence against 11 only.

Where a witness for the defence in a case of rioting stated that he was at or near the scene of the riot, the Magistrate, without any further proceedings, ordered him to enter into a bond to keep the peace. The order was set aside as illegal.—*In re Kadar Khan*, I. L. R. 5 Mad. 380.

No order should be made for security until the person called on has had a n opportunity to defend himself.—*Emp. v. Ishwar Chundra Sur*, I. L. R. 11 Cal. 13.

When a Magistrate has called upon persons to show cause why they should not be bound down in their own recognizances to keep the peace, he cannot go beyond the requisition, and on the adjudication of the matter order them to furnish other securities besides.—*In re Abdool Bari*, 25 W. R. Cr. 50: *Ram Kissore Acharjee Chowdry* v. *Arip Khan*, 21 W. R. Cr. 6: see s. 118, *infra*.

In the case of *Anundee Koer* v. *Soonent Koer*, 10 W. R. Cr. 40, it was held, under the Criminal Procedure Code of 1861, that a Magistrate had power to cancel an order summoning a person to show cause why he should not enter into a bond to keep the peace. See ss. 125, 126, and 530 (*f*) as to cancelling a bond taken under this chapter.

Amount of Bond—See note to s. 110.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Procedure in respect of person present in Court.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Summons or warrant in case of person not so present.

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may, at any time, issue a warrant for his arrest.

For form of summons on information of a probable breach of the peace, see Sched. V, No. 12.

Under the former Acts, X of 1872 and IV of 1877, the procedure was slightly different. The Magistrate issued a summons, setting forth the particulars referred to in s. 112 (see Act X of 1877, ss. 491, 492); and if the person summoned did not attend, a warrant might then be issued for his arrest (s. 494, para. iv); provided that a warrant might, as under the proviso to this section in certain circumstances, be issued at once.

Under this Act the Magistrate must make an order in writing under s. 112, and this order must accompany every summons or warrant issued under s. 114.

Under the proviso to s 217 of Act IV of 1877, the substance of the report or information was directed to be recorded in the warrant. Here it would seem to be sufficient for the Magistrate to record a proceeding setting forth the substance of the report or other information.

In ordering the arrest of a person under this section, the Magistrate must act on recorded information; it is not enough for him to express a belief that such a course is necessary. Not only must he have "reason to fear the commission of a breach of the peace," but that such breach of the

peace cannot be prevented otherwise than by the immediate arrest of such person. See *Emp.* v. *Babua*, I. L. R. 6 All. 132, p. 138.

The words "there is reason to fear the commission of a breach of the peace" seem to limit the Magistrate's power to cases under s. 107.

Copy of order under section 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

The former Acts were more specific, giving the Magistrate power to permit the person informed against to appear and enter into the required security or recognizance, or to show cause against such requisition by an agent duly authorized to act in his behalf.

'Pleader' includes advocate, a vakil or an attorney of a High Court, and any muktar or other person appointed with the permission of the Court to act in the proceedings; see definition, s. 4, cl. (*n*), *supra*.

See *In re Dinonath Mullick*, I. L. R. 12 Cal. 133, as to circumstances under which a Magistrate ought to allow a person called upon to show cause to appear by pleader.

Inquiry as to truth of information.

117. When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trial in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

See the Explanation to s. 491 of Act X of 1872, and see also s. 515, para. 3, of the same Act.

In *In the matter of Kookor Singh*, 1. C. L. R. 130, it was held under the former Code, that a person against whom proceedings for bad livelihood were taken was entitled to have embodied in a charge the precise matter which the Magistrate considered established by evidence against him. This section lays down a distinct procedure, but provides that it shall be unnecessary in such cases to frame a charge. See *Emp.* v. *Babua*, I. L. R. 6 All. 132.

When a Magistrate does not find that a person is himself likely to commit a breach of the peace, he cannot order him to furnish security, and hold him by anticipation responsible for the result of resistance to acts which are not shown to be illegal or likely to induce a breach of the peace.—*In re Sheo Surn Lall*, 3 C. L. R. 280; see *In re Kashi Chunder Dass*, 10 B. L. R. 441; (S. C.) 19 W. R. 47. In the former case a tehsildar applied for assistance from the Police while distraining the crop of certain ryots. On this being reported to the Magistrate, he required the tehsildar to give security to keep the peace, on the ground that any riot which might result from the resistance of the ryots would be attributable to his acts. The order of the Magistrate was set aside as illegal by the High Court. See *Reg.* v. *Abdul Huq*, 20 W. R. Cr. 57.

Under Act X of 1872, it was repeatedly held, that a Magistrate could not bind over a person to keep the peace until he had adjudicated on the evidence before him, the intention of the Legislature being that a person accused should have an opportunity of exculpating himself.—*Reg.* v. *Jerespershad Singh*, 20 W. R. Cr. 18: *In re Umda Khanum*, 3 C. L. R. 72: *Rajah Run Bahadur Singh* v. *Runee Tilsmurse Kooer*, 22 W. R. Cr. 79: *In re Narsingh Narain*, 10 W. R. Cr. 1: *Ramkishore Acharjee Chowdhry* v. *Arip Khan*, 21 W. R. Cr. 6: *Gothain Luchman Pershad Poree* v. *Pohoop Narain Poorie*, 24 W. R. Cr. 30: *Noor Mohamed* v. *Nil Ratun Baychee*, 18 W. R. Cr. 2: *Mughun Misra* v. *Chamman Teli*, 2 B. L. R. Ap. Cr. 7: *In re Okhil Chunder Biswas*, 1 C. L. R. 48. See *Reg.* v. *Gungaram Potdar*, 24 W. R. Cr. 10.

Procedure.—The procedure to be followed under this Act is prescribed by Chapter XX and XXI, *infra*. Under the former Chapter no provision is made for the cross examination of witnesses, but it would, no doubt, be held, as under Act X of 1872, that an opportunity must be given to the parties of cross examining witnesses.—*Noor Mahomed* v. *Nil Ratun Bagchee*, 18 W. R. F. B. Cr. 2. See *Reg.* v. *Nusseeruddeen*, 2 All. H. C. R. 461 and *Reg* v. *Sunkur*, 2 All H C R. 406 and *Mad. H C. Pro.*, 3rd Nov. 1858; *Weir*, p 37 *Ramkissore Acharjee Chowdhry* v. *Arip Khan*, 2 W R. Cr 6 Chapter XXI, by s. 2 6, makes provision for the accused, "at any time while he is making his defence," to recall and cross examine any witness for the prosecution present in the Court or in its precincts.

It was held, under Act X of 1872, that the Magistrate was bound to assist both parties in producing their witnesses. *Reg* v *Chayt Singh*, 22 W. R Cr. 70. See *In re Kookor Singh*, 1 C L R. 120. According to the procedure laid down in Chapters XX and XXI, it appears to be in the discretion of the Magistrate to summon such witnesses offered by the parties as he thinks fit. See ss. 241, 255, 257, *infra* Under the last of these sections the Magistrate must record his reasons for refusing to summon witnesses whose attendance is desired by the accused.

It should be borne in mind that separate proceedings should be taken against each person ordered to find security, unless it is clear that there is such a connection between the parties as indicates the necessity of a contrary course.—*Mad. H C. Pro.*, 17th *March* 1863; *Weir*, p 36 Where an order has been passed requiring more persons than one to show cause why they should not severally furnish security for keeping the peace the provisions of s. 239 read with s. 117 are applicable, subject to such modifications as the latter section indicates and to such procedure as the exigencies of each individual case may render advisable in the interests of justice. A joint inquiry therefore is not *ipso facto* illegal, though it is an irregularity which according to the particular circumstances may or may not be covered by s. 537.—*Emp.* v. *Abdul Kadir*, I. L. R 9 All 452. See *Emp.* v. *Lochan*, Weekly Notes, 1881, p. 28, cited in last case, and *Hossein Buksh* v. *Emp.* I. L R. 6 Cal. 96.

If proceedings are instituted against more persons than one, it is essential to establish what each individual implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace, and in holding such enquiry it is improper to treat what is evidence against one of such persons as evidence against all without discriminating between the cases of the various persons implicated—*Emp* v. *Abdul Kadir*, I. L. R. 9 All. 452. See *Emp.* v. *Nathu*, I L. R. 9 All. 214.

Onus—Before an order can be made under this section, the inquiry must show upon the evidence that there is a reasonable probability of a breach of the peace, and not merely a bare possibility of a breach of the peace.—*Reg* v. *Abdul Huq*, 20 W. R Cr. 57 *Gosain Luchmun Pershad Pooree* v. *Pohoop Narain Pooree*, 24 W. R. Cr. 30 *In re Shoo Surn Lall*, 3 C L. R 280 *In re Kashi Chunder Dass*, 10 B L. R 441 (S. C.) 19 W. R. Cr. 47 *Emp.* v. *Abdul Kadir*, I L. R. 9 All 452. The onus is on the party on whose information or complaint the summons or warrant, as the case may be, was issued —*Dunne* v. *Ram Chunder Chowdhry*, 12 W. R. Cr. 60 *Reg.* v. *Nirungun Singh*, 2 All. H. C. R. 431 *Emp.* v. *Abdul Kadir*, I. L R. 9 All 452. Substantial grounds for an apprehension of a breach of the peace must be established by proof of facts against each person implicated What the nature of the facts should be depends upon the circumstances of each case, but where the nature of the Magistrate's order requires it overt acts must be proved before an order can be passed under s 118, and such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace. *Emp.* v. *Abdul Kadir*, I. L R. 9 All 452. See *Reg* v. *Abdul Huq*, 20 W. R. Cr. 57 *Gosain Luchmun Pershad Pooree* v. *Pohoop Narain Pooree*, 24 W. R. Cr. 30 *Rajah Run Bahadur* v. *Ranee Tilessuree Koer*, 22 W. R. Cr. 79 *In re Kashi Chunder Dass*, 10 B. L. R. 441 (S. C.) 19 W R Cr. 47.

Where the ground of complaint to which the summons has reference is found by the Magistrate to be unfounded, the Magistrate cannot proceed to adjudicate that an entirely different ground existed upon which it was likely the person summoned would commit a breach of the peace —*Ramkissore Acharjee Chowdhry* v. *Arip Khan*, 21 W. R. Cr. 6.

Notwithstanding the introduction of the words 'accused' and 'conviction,' the provisions of s. 350, *post*, apply to an inquiry instituted under s. 107, with a view to enforcing the giving a security against a breach of the peace. And in such a case, where the Magistrate by whom only part of the evidence has been taken is succeeded by another Magistrate while such inquiry is pending, the person called upon to show cause under the latter section may insist upon the recall and re examination of the witnesses whose evidence has already been taken by the former Magistrate.—See *Buroda Kant Roy* v. *Kovimuddi Moonshee*, 4 C. L. R. 452.

Accused Person —In the case of *Buroda Kant Roy* v. *Korimuddi Moonshee*, 4 C L R, p. 454, WHITE J, was of opinion that a person brought before the Court under this section was in substance "accused" of being likely to commit a breach of the peace or of doing an act which is likely to produce a breach of the peace. But in fact no offence is charged.—*Emp* v. *Abdul Kadir*, I L R. 9 All. 452, p. 457 *Emp.* v *Kanthaia*, I. L. R. 7 All 67 It would follow therefore that he is a competent witness in his own behalf. See note to s. 488, *infra*, and *Noor Mahomed* v. *Bismilla Jan*, 1. L. R. 16 Cal 781.

Evidence.—It is only evidence of specific conduct on the part of the accused from which the reasonable and immediate inference is that they are likely to commit a breach of the peace, which will justify a Magistrate in adjudicating under this Chapter.—*Rajah Run Bahadur Singh* v. *Ranee Tilessuree Koer*, 22 W. R. 79. The mere record of previous convictions on account of which a person has undergone punishment does not satisfy the requirements of ss 110, 117 and 118, and it is manifestly wrong to use these provisions so as to add to the punishment of past offences —*In re Raja Valad Hussain Sahib*, I L R 10 Bom 174 See *Emp* v. *Nawab* I. L R 2 All 835 and *In re Soobaodhy* 6 W R Cr. 6 There must be additional evidence that he has resumed avocations indicating on his part an intention to return to his former course of life—*In re Haidar Ali*, I. L R. 12 Cal. 520.

The evidence must be legal evidence taken and recorded. The report of a Subordinate Magistrate would not be sufficient (*Reg.* v. *Jivanji Limji*, 6 Bom. H. C. R. Cr. 1 : *Reg.* v. *Dalpatram Premshhai*, 5 Bom. H. C. R. Cr. 105), though such report would be sufficient information upon which the Magistrate might issue a summons—*Ib.*

Showing cause is not the mere putting in a written, or making a verbal, statement, but the supporting of that statement by such evidence as the party may be able to produce.—*Chulan Tewari* v. *Sukedai Khan*, 23 W. R. Cr. 9. If, however, the party against whom the order is made admits the truth of the information upon which it is based, it would seem to be unnecessary to proceed with the inquiry.—*Reg.* v. *Lall Beharee Singh*, 11 W. R. Cr. 50, *sed quare*. In *Reg.* v. *Irapabin Busapa*, 8 Bom. H. C. R. Cr. 102, it was held, that evidence, that is legal evidence, must be recorded. See *Reg.* v. *Isreepershad Singh*, 20 W. R. Cr. 18 ; and *Ramkissore Acharjee Chowdhry* v. *Arip Khan*, 21 W. R. Cr. 6. The evidence must be taken in the presence of the person called upon to show cause.—*Ib.*

Amount of Security :—See notes to s. 110, *supra*.

Under s. 491 of Act X of 1872 (s. 107, *supra*), it was held, that an order postponing proceedings until the person called upon to show cause should have established in a Civil Court the title claimed by him to the property in dispute ; and with reference to which it was alleged there was a likelihood of a breach of the peace, amounted to a discharge. — *Emp.* v. *Dhuniram*, 5 C. L. R. 300.

General Repute.—The provision in the last clause of the section that the fact that a person is a habitual offender may be proved by evidence of general repute for the purposes of the section does not apply to proceedings under s. 110.—*Banarsi Das*, Punjab Rec. 1888, p. 30. As to evidence of bad character, see Evidence Act 154 ; *In re Pedda Siva Reddi*, I. L. R. 3 Mad. 238.

Order to give security.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112.

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive :

thirdly—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

The first part of this section corresponds generally with s. 497 of Act X of 1872, and with s. 220 of Act IV of 1877. The second proviso is in accordance with para. 1 of s. 493 of the former Act, with a further provision that the bond shall not be excessive. The addition seems to have been suggested by the cases of *Emp.* v. *Dedar Sircar*, I. L. R. 2 Cal. 284 ; (8.C.) 1 C. L. R. 95 : see also *Mad. H. C. Pro.*, 20th *April*, 1869 ; *Weir*, p. 36 ; *In re Nilmadub Ghosal*, 19 W. R. Cr. 1 : *In re Umbica Proshad*, 1 C. L. R. 268 : *In re Juggut Chunder Chuckerbutty*, I. L. R. 2 Cal. 110 : (8 C.) 1 C. L. R. 48 : and *Emp.* v. *Kala Chand Dass*, 6 C. L. R. 128 : (8. C.) I. L. R. 6 Cal. 14. See *Ram Sing* v. *Emp.*, Punjab Rec., 1883, p. 1. In the first of these cases it was said that the amount of the security to be prescribed should be such as to afford the person against whom the order was made a fair chance of complying with the order. It was considered that security of Rs. 2,000 in four sureties of Rs. 500 each, or in default imprisonment (*In re Umbica Proshad*, 1 C. L. R. 268), and a recognizance of Rs. 10,000, with two sureties of Rs. 5,000 each (*In re Juggut Chunder Chuckerbutty*, I. L. R. 2 Cal. 110 ; (S. C.) 1 C. L. R. 48), were excessive and unreasonable. In the case of *The Emp.* v. *Kala Chand Dass*, I. L. R. 6 Cal. 14 : (8. C.) 6 C. L. R. 128, where it appeared that the securities required were prohibitive, the High Court modified the orders and reduced the amounts of the securities to what it considered reasonable under the circumstances. See notes to s. 110, *supra*.

Onus. As to the onus of proving the necessity for keeping the peace, see *Emp.* v. *Abdul Kadir*, I. L. R. 9 All. 452, and notes under ss. 107 and 117 under this heading.

It would seem that, notwithstanding the first proviso, it would be competent to the Magistrate under this section to make an order upon the inquiry discharging the accused upon his own recognizance, although the order made under s. 112 should have required a bond with sureties.

The order should not be for the extreme term except when absolutely necessary.—*Emp.* v. *Nathu*, I. L. R. 6 All. 219. See the notes to s. 110.

It is only the person in respect of whom the inquiry is made who can be ordered to give security. It is illegal to take recognizances from one person in order to prevent another committing a breach of the peace.—*Ram Coomar Banerjee* v. *Rajah Gopal Singh Deb*, 17 W. R. Cr. 54.

An order to execute a second recognizance during the time the first recognizance is in force was held to be illegal under the Code of 1861. — *Reg.* v. *Kumodini Kant Banerjee Chowdhry*, 9 B. L. R. App. 30. See *In re Juswant Singh*, 6 W. R. Cr. 18.

Appeal.—Any person required by a Magistrate other than the District Magistrate or a Presidency Magistrate to give security for good behaviour under this section may appeal to the District Magistrate.—*Section 406, infra.* But no appeal lies to the Magistrate of the District from the order of a Magistrate when the case has under s. 123 been referred to the Sessions Judge, and he has affirmed the order. — *Kanhya*, Punj. Rec., 1886, p. 55. There is no appeal in other cases of this class. — *Chand Khan* v. *Emp.*, I. L. R. 9 Cal. 878.

As to rejection or discharge of sureties, see ss. 122, 126, *infra.*

Discharge of person informed against.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

This section points more specifically than the former Acts did to the necessity of proof that there is occasion to require security.

Where the information upon which the summons was issued is found on inquiry by the Magistrate to be unfounded, he cannot proceed to adjudicate that an entirely different ground existed upon which it was likely the person called upon to show cause would commit a breach of the peace. – *Ramkissore Acharjee Chowdhry* v. *Arip Khan*, 21 W. R. Cr. 6.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Commencement of period for which security is required

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

In *Reg.* v. *Shona Dagse*, 24 W. R. Cr. 13, it was held, that when the conviction of an offence is contemporaneous with an order for taking security for good behaviour (as under s. 106 of this Act), ss. 504 506 of Act X of 1872 contemplated that the sentence for that offence should first be carried out, and the person to be bound should then be brought up for the purpose of being bound. So in the case of *Emp.* v. *Partab*, I. L. R. 1 All. 666, where an accused person was sentenced to be rigorously imprisoned for dishonestly having received stolen property, and for being by repute a thief, and on the expiration of the term of imprisonment ordered to furnish security for good behaviour,—it was held by SPANKIE, J., that a proceeding should have been drawn up, representing that the Magistrate was satisfied from the evidence that the accused was by reputed thief, and therefore security should be required of him; and that an order should been recorded to the effect that, on the expiry of the imprisonment, the accused should be have brought up for the purpose of being bound. See *Tamiz Mandal* v. *Umip Kariyar*, I. L. R. 9 Cal. 215.

Under this section it would seem that there is no necessity for the accused being brought up on the expiration of the term of imprisonment, but that he may be required at once to furnish the requisite security. Section 123, however, provides that if any person does not give security on or before the date on which the period for which such security is to be given commences, he shall, if he is already in prison, be detained in prison until such period expires, or until within such period he gives the security required.

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

As to the procedure on forfeiture of bonds, see Chap. XLII, *post.*

Para. 6 of s. 502 of Act X of 1872 with which the section corresponds provided, that "the commission, or attempt to commit, or abetment, of any offence whatever, and wherever it may be committed, is a breach of the bond." The Madras High Court was of opinion that that paragraph was not to be read as a definition of the acts which would give rise to the liability to the penalty of the bond, so as to confine the liability to occasions on which some actually punishable offence had been committed so as to render it incumbent on the prosecutor, in calling upon the defendant to show cause why the penalty should not be levied, to establish the actual commission of an offence. The Court was satisfied that it was intended merely as an illustration of some modes in which the bond might be broken.—*Ananthacharri* v. *Ananthacharri*, I. L. R. 2 Mad. 169.

A Magistrate ought not to forfeit a recognizance to keep the peace, unless the person charged with the breach has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause has been issued.—*Emp.* v. *Nobin Chunder Dutt*, 4 C. L. R. (F. B.) 243: I. L. R. 4 Cal. (F. B.) 865.

Power to reject sureties.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this Chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

The ground upon which a Magistrate refuses to accept any surety must be valid and reasonable.—*In re Narain Sooboddhee*, 22 W. R. Cr. 37. Thus a Magistrate has no power to impose an arbitrary condition not essential to restrain a party from the infringement of the law, *e.g.*, a condition requiring the accused to furnish two securities being persons of respectability and substance not related to him and residing within one mile from his house.—*Ib.*

Imprisonment in default of security.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before High Court or Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

This section empowers the Magistrate to take action only where security for a period exceeding one year has been required, and the order has not been complied with, and it applies whether the security be to keep the peace or for good behaviour.

Under the former Codes it was held, that a Magistrate was not justified in increasing the amount of security and in demanding sureties on a summons to show cause, which provided only for a recognizance of much smaller amount and which made no mention of sureties at all—*In re Isree Pershad*, 18 W. R. Cr. 61; but that he might, after he had bound down any person to keep the peace, increase the amount of the recognizance.—*Diego De Silva* v. *Jehangeer*, 7 W. R. 23; and see *In re Gooroo Dass Roy*, 18 W. R. Cr. 57. Now, under the first proviso to s. 118, *ante*, no person can be ordered to give security of a nature different from or of a larger amount than, or for a longer period than, that specified in the order made under s. 112, a copy of which order, s. 115, must accompany the summons or warrant.

The order should direct that the person bound to give security be imprisoned until the security is found, provided always that the period of such imprisonment is in no case to exceed the period for which the person is bound.—*Mad. H. C. Pro.*, *4th September* 1874; *Weir*, p. 37. An order merely directing the accused to be "imprisoned till he gives security" is bad.—*Mailamdi Fakir* v. *Tarapulla Pramanik*, I. L. R. 8 Cal. 644.

Appeal.—It is not clear, as under s. 507 of Act X of 1872, that the Magistrate would have power to act where the security required had not been given by reason of sureties being rejected under the preceding section. Under Act X of 1872, s. 508, no appeal lay from an order of a Sessions Court fixing a period of detention for an accused person who refused to furnish security.—*Reg.* v. *Roghoo Dome*, 24 W. R. Cr. 12. It would seem that no appeal would lie under this Act from an order made by a Sessions Court on reference under this section.—*Kanhya*, Punj. Rec., 1886, p. 55 See ss. 406, 410, *infra*. There is no appeal from an order passed by the District Magistrate or Presidency Magistrate under this section.—*Chand Khan* v. *Emp.*, I. L. R. 9 Cal. 878.

For form of warrant for commitment on failure to find security to keep the peace, see Sched. V, No. 13; and for warrant of commitment on failure to find security for good behaviour, see Sched. V, No. 14.

Power to release persons imprisoned for failing to give security

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

This section applies where security has been required to keep the peace under s. 106; whereas s. 512 of Act X of 1872 only applied when security was required for good behaviour.

It is only a District Magistrate or a Presidency Magistrate who has power under this section. If any other Magistrate makes an order discharging a person lawfully bound to be of good behaviour, his proceedings are void.—*Section 530 (e), infra.* No provision is made for the case of a Magistrate not empowered discharging a person lawfully bound to keep the peace.

For form of warrant to discharge a person imprisoned on failure to give security, see Sched. V, No. 15.

Power of District Magistrate to cancel any bond for keeping the peace

125. The District Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this Chapter by order of any Court in his district not superior to his Court.

This section corresponds with s. 500 of Act X of 1872, with a further provision making it necessary for the Magistrate to record his reasons in writing.

For form of warrant to discharge a person imprisoned on failure to give security, see Sched. V, No. 15.

In the case of *Anundee Kooer* v. *Soonee Kooer*, 10 W. R. Cr. 40, it was held, that a District Magistrate had power to cancel an order summoning a person to show cause why he should not enter into a bond to keep the peace.

The power of cancelling a bond conferred in this section is limited to District Magistrates, and no other Magistrate is competent to cancel a bond for keeping the peace.—*Section 530 (f).*

Discharge of sureties.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

This section consolidates ss. 501 and 513 of Act X of 1872, and s. 226 of Act IV of 1877, making it clear that a Presidency Magistrate, District Magistrate, Subdivisional Magistrate, and Magistrate of the first class may cancel a bond on the application of the surety.

Appeal.—Any person required by a Magistrate other than the District Magistrate to give security for good behaviour under s. 118 may appeal to the District Magistrate.—*Section 406.* Consequently, it would seem that there is an appeal from orders made under this section which may be deemed to be made under s. 118.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or Police-officer.

127. Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; *and it shall thereupon be the duty* of the members of such assembly to disperse accordingly.

This section applies to the Police in the towns of Calcutta and Bombay.

An officer superior in rank to an officer in charge of a Police-station may act under this section. —*Emp.* v. *Tucker*, I. L. R. 7 Bom. 42.

An assembly of five or more persons is designated an 'unlawful assembly' if the common object of the persons composing that assembly is to do any of the acts set forth in s. 141 of the Indian Penal Code. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly or continues in it, is said to be a member of an unlawful assembly. —*Indian Penal Code*, *s.* 142.

Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, is punishable under s. 151 of the Indian Penal Code.

Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.—*Indian Penal Code*, *s.* 145.

Act V of 1861, s. 15, provides, that additional Police may be quartered in disturbed or dangerous districts, the cost of such Police being chargeable on the inhabitants of the districts. Section 17 of the same Act empowers any Police-officer not below the rank of an inspector to apply to the nearest Magistrate to appoint so many residents of the neighbourhood as such Police-officer may require to act as special Police-officers.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

This section takes the place of s. 481 of Act X of 1872, with certain additions. It puts volunteers enrolled under Act XX of 1869 on the same footing as officers or soldiers of Her Majesty's Army for the purposes mentioned in the section.

Act XX of 1869, s. 24, provides, that "any member of such corps (of volunteers), whenever he is on duty, may prevent any disturbance of the public peace and disperse any persons whom he may find assembled together to the number of five or more without reasonable cause, between sunset and sunrise, in any public street, thoroughfare or other public place in which such member of the said corps may be in the discharge of his duty."

The words at the end of the section giving power to confine "the persons who form part of the unlawful assembly in order to disperse such assembly, or that they may be punished according to law" are new.

Section 31 of Act V of 1861 provides, that it shall be the duty of the Police to keep order in the public places mentioned in the section and to prevent obstructions on the occasions of assemblies and processions in public places; and s. 32 of the same Act provides, that any persons disobeying orders of the Police shall be liable to certain penalties. See Act XXIV of 1859 (Madras Police), s. 49; and Act VII (Bom.), 1867, ss. 27 and 28.

Section 42 of this Act, *ante*, provides, that "every person is bound to assist a Magistrate or Police-officer demanding his aid whether within or without the Presidency-towns (*a*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest; (*b*) in the prevention of a breach of the peace or of any injury attempted to be committed to any railway, canal, or public property; (*c*) in the suppression of a riot or affray.

It is only when acting as such, that an officer or soldier or volunteer may not be required to assist a Magistrate or officer in charge of a Police-station. When acting as private citizens, such persons may be called upon to assist in the same manner as ordinary private citizens.

Use of military force

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly

130 When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or non-Commissioned Officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury, to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

This section leaves it entirely in the discretion of the officer in command as to how he will disperse the assembly or arrest and confine the persons forming part of it.

Power of Commissioned Military Officers to disperse assembly

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned Officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

The section empowers Commissioned Officers only.

Protection against prosecution for acts done under this Chapter

132. No prosecution against any Magistrate, Military Officer, Police-officer, soldier or volunteer for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and

(*a*) no Magistrate or Police-officer acting under this Chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

The first part of this section is based upon s. 488 of Act X of 1872. It makes it now necessary in all cases of prosecutions against the persons mentioned therein to obtain the previous sanction of the Governor General in Council. It further gives the protection to volunteers made necessary by the alterations as to volunteers made in the preceding sections. Under Act X of 1872 prosecutions might have been instituted with the sanction of the Government of India or the Governments of Madras and Bombay.

The remaining portions of the section are in accordance with ss. 483, 485 and 486 of Act X of 1872, with an addition giving protection also to volunteers.

An Act is said to be done with good faith, if done with due care and attention.—*Indian Penal Code, s. 52.*

Section 537, *post* provides that no finding, sentence or order of a competent Court shall be set aside under Chap. XXVII or on appeal or revision, unless it has occasioned a failure of justice on account of any want of sanction under s. 195. It is silent as to the want of sanction under this or s. 197, *post*.

CHAPTER X.

PUBLIC NUISANCES.

Under Act XV of 1883 (N. W. P. and Oudh Municipalities Act) s. 133 to 144, both inclusive, of this Code so far as they can be applicable, apply to all proceedings taken in the exercise of the powers by that Act upon Municipal Boards —*S.* 57.

Conditional order for removal of nuisance.

133. Whenever a District Magistrate, a Subdivisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to suppress or remove such trade or occupation ; or

to remove such goods or merchandise ; or

to prevent or stop the construction of such building ; or

to remove, repair or support it ; or

to alter the disposal of such substance ; or

to fence such tank, well or excavation, as the case may be ; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A 'public place' includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

This section follows generally the provisions of s. 521 of Act X of 1872.

The provision in the first paragraph, that the Magistrate may take proceedings on a report or other information, or upon taking such evidence (if any) as he thinks fit, is in accordance with the last paragraph of s. 521 of Act X of 1872. It is in the discretion of the Magistrate to take evidence or not.

The following alterations and additions have been made :—

Para. 2.—For the words 'from any thoroughfare or public place,' this Act substitutes the words 'from any way, river or channel which is or may be lawfully used by the public, or from any public place.'

Para. 3.—The words 'keeping of any goods or merchandise' are new. 'Physical comfort' has been substituted for 'comfort,' an alteration which would seem to have been suggested by the case of *Sathu Valad Kadir Sausaree* v. *Ibrahim Aga Valad Mirza Aga*, I. L. R. 2 Bom. 457.

Para 4 The words or explosion after conflagration are new

Para 6 Such way has been substituted for any public thoroughfare

Para 7 Except that it is provided that the order which may be made is a *conditional* order, the alterations in the paragraph are in the main verbal only

Under Act X of 1872 where the Magistrate considered any building to be in such a state of weakness as to be dangerous he was empowered only to order its removal This section empowers the Magistrate to direct that it be removed or that it be repaired or supported

While the order under s 521 of Act X of 1872 directed the person on whom it was issued in the alternative to show cause why the order should not be enforced the alternative direction in this section directs such person to appear and move to have the order set aside or modified

The procedure to be followed where appearance is entered is laid down by the sections next following

The last paragraph of this section providing that no order thereunder shall be questioned in a Civil Court is in accordance with *Rooke* v *Pyari Lall* 3 B L R Ap x 43 (8 C) 11 W R 434

The Explanation follows that of s 521 of Act X of 1872

Under s 76 of Act XV of 1883 (N W P and Oudh Municipalities Act) subject to the orders of the Local Government power is given to Municipal Boards to prohibit the commission of public nuisances Section 77 of the same Act provides that (1) the Local Government may invest within the limits of the Municipality a Municipal Board with the powers of a Magistrate of a district as described in s 133 of the Code of Criminal Procedure and with power to make additional orders of the nature referred to in that section in respect of all or any acts or omissions punishable under rules made in exercise of the power conferred by s 55 clauses (*a*) (*b*) (*c*) (*d*) and (*h*) and that (2) sections 133 to 142 (both inclusive) of the Code of Criminal Procedure shall so far as they can be applicable apply to all proceedings taken in the exercise of these powers provided that for the purpose of such proceedings s 133 of the Code shall be read as if for the words before himself or some other Magistrate of the first and second class the words before the District Magistrate or some Magistrate of the first and second class appointed by him on this behalf were substituted and that (3) the Local Government may whenever it thinks fit withdraw the powers with which it has invested a Board under that section

As to nuisances in Municipalities in the Central Provinces see Act XVIII of 1889 Chap VI

Presidency Towns—It is to be noted that Presidency Magistrates are not empowered to act under this Chapter which applies only to District Magistrates Subdivisional Magistrates and Magistrates of the first class specially empowered In cases of nuisances Presidency Magistrates act under the Penal Code, the Police Acts and such other local Acts as deal with special forms of nuisance as for instance the Fire Brigade Act or Smoke Nuisance Act Under the Penal Code a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction danger or annoyance to persons who may have occasion to use any public right A common nuisance is not excused on the ground that it causes some convenience or advantage —*S* 268 Sections 268—294 of the Penal Code deal with nuisances

Magistrates Empowered—In Madras and Bombay Magistrates of the first class were empowered to act under s 521 of Act X of 1872—*Madras Gazette* 1873 p 717 *Bombay Gazette* 1872 p 1345, and also *ibid* 1873 p 16 So in the Punjab Magistrates of the first class have powers subject to the general control of the Magistrate of the District, to make orders in local nuisance cases —*Punjab Gazette* 1878 Part I p 361

All senior officers at head quarter stations under the Magistrate of the District in the Punjab were under s 521 of Act X of 1872 invested with power to make orders &c in local nuisance cases For the purposes noted in this paragraph the Senior Assistant Commissioner being a first class Magistrate is to be deemed to be the senior officer under the Magistrate and if there is no Assistant Commissioner who is a first class Magistrate the Senior Extra Assistant Commissioner being a first class Magistrate is to be deemed to be the senior officer under the Magistrate —*Punjab Gazette* 1873 p 75

Where a Subdivisional Magistrate on reports made by a second class Magistrate in his administrative capacity made a conditional order against a person to abate a nuisance or appear before the second class Magistrate to show cause why the order should not be enforced cause was shown as directed and the order was made absolute The second class Magistrate then issued a notice and order under s 140 requiring the nuisance to be abated within a certain time The High Court on a reference held that the order was not illegal inasmuch as the Magistrate as indicated by s 137 was the Magistrate empowered and directed by the Magistrate having jurisdiction under s 133 to take the evidence and presumably the same Magistrate was referred to in s 140 The Court, however expressed an opinion that it was undesirable that Magistrates acting under s 133 should call on the officer who reports on a nuisance in his administrative capacity to decide judicially whether it is a nuisance or not.—*In re Narasimha* I L R 9 Mad 201

Procedure A Magistrate who has commenced proceedings under this section is not at liberty to proceed otherwise than in conformity with the rules laid down in the sections following *Reg* v *Jutti Sing* 1 W R Cr 37 *In re Mahadaji Sadashiv Tilak* I L R 11 Bom 375 see *Morgan* v *Leach* 2 Moo I A at p 43 He cannot proceed to pass an order for the removal of a nuisance without calling upon the party to show cause why the order should not be passed against him and without hearing the objections even if they are filed after the time fixed for their presentation provided they are filed before he takes up the case —*In re Bistoo Chunder Chuckerbutty* 10 W R Cr 27 *Reg* v *Janc Kenath Bhuttacharjee* 2 W R Cr 36

Before a Magistrate could make an order under s 521 of Act X of 1872 to remove an obstruction from a path alleged to be a public thoroughfare it was held that he must first on a proceeding had under s 532 have come to a conclusion that the path was open to the public —*In re Chunder*

Nath Sen, I. L. R. 5 Cal. 875 (S. C.) 6 C. L. R., 379. There a Magistrate ordered the removal of an obstruction from a pathway under s. 521, and had further submitted this order to the consideration of a jury appointed under s. 523 before he had himself come to any conclusion whether the pathway was a public thoroughfare and it was held, that the only course open to him was to stay all proceedings initiated by him under s. 521, and take action under s. 532. So, in *In re Becharam Bhuttacharjee*, 15 W. R. Cr. 67, it was laid down that, on a complaint for the removal of an obstruction from a thoroughfare, a Magistrate should first enquire if the road is public or not. If he finds in the affirmative, he has jurisdiction. See *Roy Omesh Chunder Sen* v. *Ichanath Mozumdar*, 21 W. R. Cr. 64. *Petambur Jugi* v. *Nasaruddy*, 25 W. R. Cr. 4.

Under the present Act the Magistrate is bound to act, in the first instance upon a report or other information or upon evidence taken by him, if he should think fit to take such evidence.

If, however, a Magistrate making an order under this section considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury. In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.—*S.* 142, *infra*.

In the case of *Makhan Lal Saha* v. *Makhan Churn Saha*, I. L. R. 11 Cal. 271, an application was made under this section for the removal of an obstruction in a public thoroughfare; but after a personal local inspection by the Magistrate, and without any evidence being taken, the parties were referred to a civil suit, and the order was refused, the Magistrate holding that the way was not a public way. A civil suit was then filed and during its pendency a second application was made under this section, with a like object, and was refused on the ground that the civil suit was pending, and that there was no likelihood of a breach of the peace. The civil suit resulted in the way being held to be a public thoroughfare. A third application was then made under this section to have the obstruction removed, but the Magistrate held that, on face of the two previous orders he could not interfere. The High Court held that the order of the Magistrate was wrong upon the ground that he was bound to make inquiry, and as there never had been any inquiry into the matter, the first decision being no decision at all, but a mere dictum of the Magistrate upon a personal local investigation without hearing evidence, and thus not on judicial inquiry, and the second decision being based merely upon the pendency of the civil suit and the previous improper order, and that neither of these orders operated therefore as a bar to the Magistrate inquiring into the matter of the complaint upon the third application.

Nuisance in any Way, River, or Channel open to public.—As already pointed out, this section has substituted the words 'way, river, or channel which may lawfully be used by the public' for the word 'thoroughfare.

In proceedings under this head it is necessary to show two things: *first*, that the act complained of is a nuisance or obstruction, and, *second*, that it was committed in a public place or places which may lawfully be used by the public.—*Hadjee Muzhur Ali* v. *Gundowree Sahoo*, 25 W. R. Cr. 72. *In re Shah Soojaut Hossein*, 22 W. R. Cr. 19. See *In re Chundernath Sen*, I. L. R. 5 Cal. 875 (S.C.) 6 C. L. R. 379, and the cases there cited.

The obstruction of a private path is not a nuisance under the section.—*Reg.* v. *Janokenath Bhuttacharjee*, 2 W. R. Cr. 36.

The order of the Magistrate should be confined to a direction to remove the obstruction or nuisance.—*In re Paul Dass*, 10 W. R. Cr. 51.

In the case of a tank which has become a nuisance, the Magistrate cannot order the proprietor to excavate it. The proprietor ought to have a discretion allowed him as to the mode in which he will remove the nuisance caused by the tank. If the Magistrate is subsequently compelled to direct the excavation of the tank, the actual cost of excavation can alone be charged against the proprietor at whose disposition the soil taken out in the excavation must be placed.—*In re Paul Dass*, 10 W. R. Cr. 51. So, if necessary, a Magistrate may cause a tank to be filled up.—*In re Bistoo Chunder Chuckerbutty*, 10 W. R. Cr. 27.

Trade or Occupation.—It is to be observed that "person" includes "any company or association or body of persons whether incorporated or not."—Indian Penal Code, s. 11, see s. 4 (*w*), *ante*. Accordingly companies or associations may equally with private individuals be proceeded against under this section.

The section deals only with occupations or trades which are in *themselves* injurious to health or physical comfort, and has nothing to do with trades which in themselves are innocuous, but in the course of which the manager or plier of them commits a public nuisance.—*Bareiro* v. *Emp.*, Punj. Rec. 1888, p. 118.

No length of employment can legalise a trade or occupation which is a public nuisance.—*Municipal Commissioners of Suburbs of Calcutta* v. *Mahomed Ali*, 7 B. L. R. 499, see *Weld* v. *Hornby*, 7 East, 199. *Rex* v. *Cross*, 3 Camp. 224. See *Shadi* v. *Emp.*, Punj. Rec., 1888, p. 31. See *Indian Penal Code*, s. 268 (last clause). In the first of these cases the condition and conduct of a long established slaughterhouse was proved to be, in fact, an offensive nuisance, but there was no evidence to show that the slaughterhouse was in a worse condition than it had been at any time since its establishment. The Magistrate was held to be justified in suppressing the trade carried on at the slaughterhouse, although it had been commenced under magisterial sanction.

This section does not warrant a Magistrate interfering with a prostitute for the purpose of removing her from her dwelling house on the ground of her profession, so long as she behaves herself orderly and quietly and creates no open scandal by riotous living.—*Nundo Kumaree Peshagar* v. *Anund Mohun Gooho Thakurta*, 24 W. R. Cr. 68. As to punishment for keeping disorderly houses, see Police Act, Act IV of 1866, s. 43 (Calcutta), Act VI of 1866, s. 17 (Calcutta Suburban); Act XXIV of 1859 (Madras), and Act VII of 1867 (Bombay).

In *Hajee Mazhur Ali* v. *Gundowree Sahoo*, 25 W. R. Cr. 72, it was said that acts which are shocking to the prejudice of a caste are not necessarily nuisances, and, at any rate, if done in a private place, could not be dealt with under s. 521 of Act X of 1872.

Building in Dangerously Weak State.—Where buildings are in a dangerous state, it is manifest that removal would not in all cases be necessary. This section accordingly provides that the Magistrate may direct that they should be repaired or supported.—See *Mussamut Rajowan*, Punj. Rec., 1 90, p. 11.

Tank or Well adjacent to Public Way.—In the case of a tank considered merely as a reservoir of water, the Magistrate's powers extend only to having the tank fenced in, the object being to prevent accidents; but when a tank is a half dry excavation into which the people are in the habit of throwing rubbish, and which has from this cause become a public nuisance, injurious to the health and comfort of the community, the Magistrate may cause the tank to be filled up, if that is the only way of suppressing the nuisance.—*In re Bistoo Chunder Chuckerbutty*, 10 W. R. Cr. 27; see *In re Paul Dass*, 10 W. R., Cr. 51.

Jurisdiction of Criminal Courts.—A Magistrate's powers under s. 521 of Act X of 1872, it was held, were confined to the instances specifically mentioned in the section.—*In re Shah Sonjaut Hossein* 22 W. R. Cr. 10. The section does not confer general powers upon a Magistrate to pass any order he may consider necessary for the preservation of the public health—See *Ibid.* Thus, an application to have it declared that a certain place cannot be used for the purposes of cremation cannot be dealt with under it.—*Gudadhur Kamila* v. *Baida Nath Jana*, 22 W. R. Cr. 6.

The obstruction of a drain into which the complainant's sewage falls is not within the provisions of these sections, but is a case for a civil suit and injunction.—*In re Troylukhonath Bose*, 5 W. R. Cr. 68; *Sham Dass* v. *Bhola Dass*, 1 W. R. 324.

The obstruction of a private path is, as above mentioned, not a nuisance which can be dealt with by a Criminal Court.—*Reg.* v. *Janokeenath Bhuttacharjee*, 2 W. R. Cr. 36. As already stated, acts which are shocking to the prejudice of a caste are not necessarily nuisances, and, at any rate, if done in a private place, cannot be dealt with under this section.—*Hadjee Mazhur Ali* v. *Gundowree Sahoo*, 25 W. R. Cr. 72.

The Magistrate can only deal with existing obstructions. He has no power to direct what is to be done in case of any future obstruction.—*Kasht Chunder Chuckerbutty* v. *Yar Mahomed*, 21 W. R. Cr. 10.

This section and ss. 134—137, *post*, are not intended to be exercised where there is a *bonâ fide* dispute as to the existence of a public right. Where there is such a dispute, the Court should pass no order until the public right has been established by proper legal proceedings, civil or criminal.—*Bazaruddin Bhuiah* v. *Baha Rait*, I. L. R. 11 Cal. 8: *Emp.* v. *Bissessur Sahoo*, I. L. R. 17 Cal. 562. These sections do not contemplate an inquiry into disputed questions of title raised *bonâ fide*.—*Askar Mea* v. *Sabdar Mea*, I. L. R. 12 Cal. 137: *Lal Meah* v. *Nazir Khalusht*, I. L. R. 12 Cal. 696: *Emp.* v. *Prem Singh*, Punj. Rec., 1887, p. 9. The mere assertion however of a claim of title made without reasonable ground or honest belief in it or honest intention to support it will not oust a criminal Court of its jurisdiction—*Emp.* v. *Bissessur Sahoo*, I. L. R. 17 Cal. 562.—*Luckhee Narain Banerjee* v. *Ram Kumar Banerjee*, I. L. R. 15 Cal. 504. And it is open to the Magistrate to inquire into the *bonâ fides* of such a claim. If on a fair consideration of the matter and remembering how scrupulously private rights should be respected he thinks the claim not *bonâ fide* he should record his reasons for thinking so and proceed to decide the case without further reference to the claim.—*Ibid.* Such a claim must be set up at or before the hearing and not afterwards.—*Ibid.*

Where a District Magistrate, in a proceeding under this section, satisfies himself that there is no necessity for proceeding further, he is competent to let the matter drop.—*In re Issur Chunder Nath*, I. L. R. 8 Cal. 883: (S. C.) 11 C. L. R. 235: *In re Shonai Paramanick*, 1 C. L. R. 486.

Jurisdiction of Civil Courts.—As under s. 521 of Act X of 1872, so under this section, no order made by a Magistrate can be called in question by a Civil Court, even on the ground that it was made without jurisdiction, as where it is alleged that the land in respect of which an order was made was private property, and not a thoroughfare or public place.—*Mutty Ram Sahoo* v. *Mohi Lall Roy*, I. L. R. 6 Cal. 201: (S. C.) 7 C. L. R. 433; see *Rooke* v. *Peart Lall*, 3 B. L. R. Appx. 3: (S.C). 11 W. R. 434: *Khodabuksh Mundal* v. *Monglai Mundul*, I. L. R. 14 Cal. 60. But where an order has become absolute, *e.g.*, for the removal of an obstruction or nuisance from a particular place, it is competent to a Civil Court, irrespective of such order, to try the question whether the place is private property and not a public way or public place.—*Chunt Lal* v. *Ramkishen Saha*, I. L. R. 15 Cal. 460: *Mutty Ram Sahoo* v. *Mohi Lall Roy*, I. L. R. 6 Cal. 201: (S. C.) 7 C. L. R. 433, *per* FIELD, J., *Latji Ukhada* v. *Joroba Douba*, 8 Bom. H. C. R. (A. C.) 94: *Nilkanthapa* v. *Magistrate of Sholapore*, I. L. R. 6 Bom. 670: *Balaram Chatrukalal* v. *Magistrate of Talujna Igatpuri*, I. L. R. 6 Bom. 272; see *Gooroo Pershad Roy* v. *Probhoo Ram Chuttapadhya*, 19 W. R. 426: *Reg.* v. *Bolton*, 1 Q. B. 66: *Brittain* v. *Kinnaird*, 1 B. and B. 432.

The persons aggrieved by an order under this Chapter cannot sue the parties who instituted the proceedings before the Magistrate for damages, unless they can show that, in taking such proceedings, they were actuated by malicious motives, or intended wrongfully to injure.—*Chintamani Bapooha* v. *Digambar Mitter*, 2 B. L. R. (S. N.), xv, *per* PHEAR and HOBHOUSE, JJ.

Revision.—Under the corresponding section (308) of the Criminal Procedure Code of 1861, Act XXV of 1861, it was held, that where an order had been made under that section, suppressing a trade or occupation as a nuisance and injurious to the health of the community, the High Court would not interfere, unless it found that there was no reasonable evidence before the Magistrate of the trade being injurious to the health and comfort of the community, or that the cause shown was such as ought to have satisfied the Magistrate that his order for suppressing the trade was not reasonable or proper.—*Municipal Commissioners of Calcutta* v. *Amanat Ali*, 7 B. L. R. 516.

Section 521 of Act X of 1872 expressly declared that an order made thereunder was a judicial proceeding, whether evidence was taken or not. That provision has been omitted in this section.

In Bombay, however, it was held, overruling the case of *Ashburner* v. *Keshav*, 4 Bom. H. C. R. A. C. J., 150, that an order under s. 308 of the Code of 1861 was a judicial proceeding, and was therefore open to review by the High Court when an error in law was committed.—*In re Gangaparsad Bin Sobharam*, 9 Bom. H. C. R. 100: see *Collector of Hooghly* v. *Tarak Nath Mookhopadhya*, 7 B. L. R. 449. In Calcutta also, the High Court, in the case of *Angelo* v. *Cargill*, 9 B. L. R. 417, under the same Code held, that where there had been an inquiry whether a particular place was a public place, and whether there was an obstruction, the High Court could not set aside the order except for an error in law, or an excess of jurisdiction, and that it was not a ground for interference that a Magistrate had come to an erroneous decision upon the evidence. Again, under s. 521 of Act X of 1872, it was held in Calcutta that the High Court, as a Court of Revision, would not enter upon a consideration of the value of the evidence upon which the Magistrate decided to act under the section.—*In re Shonai Paramanick* v. *Joygondro Shaha*, 1 C. L. R. 486.

The fact of a Magistrate taking action under the section, it has been held, is *primâ facie* sufficient to show that he considers the *locus in quo* to be a way or other public place, and if no objection is taken that it is not such, and the jury find that the order made under the section is reasonable and proper, the High Court will not interfere.—*In re Imamdi Khan*, 8 C. L. R. 309.

Where a person to whom an order has been issued under this section appears to show cause, the Magistrate is bound to take evidence under s. 137.—*In re Mohur Mandar*, 8 C. L. R. 431: *Nimae Churn Dey* v. *Kashie Nath Rakhit*, 20 W. R. Cr. 7: *In re Madaji Sadashiv Tilak*, I. L. R. 11 Bom. 375.

If a Magistrate, not being empowered in this behalf, makes an order under this section, his proceedings are void.—*Section* 530 (*g*), *infra*.

Form of Order.—Every order must appoint a time within which and a place where the person to whom it is directed may appear before the Magistrate and move to have the order set aside or modified. No conditional order can be made.—*Emp.* v. *Brojokanto Roy Choudhuri*, I. L. R. 9 Cal. 637.

For forms of order for the removal of nuisances, see Sched. V, No. 16.

Service or notification of order.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

This section corresponds generally with s. 522 of Act X of 1872. It further provides, that the summons shall, if practicable, be served in the manner provided for the service of summons. Sections 68–74, *supra*, deal with the service of summons. The words directing the summons, where it cannot be served on the person against whom it is made, to be served by proclamation 'published in such manner as the Local Government may direct' are new. The Government of Bengal has by notification directed that the proclamation shall be notified by beat of drum.—*Calcutta Gazette*, 1883, Part I, p. 245.

The terms of the section and the notification as to the promulgation and issue of an order are, it has been held, directory and an omission to follow the direction given though it is an irregularity, does not invalidate the order.—*In re Parbutty Churn Aitch*, I. L. R. 16 Cal. 9. See *Emp.* v. *Narayana*, I. L. R. 12 Mad. 475. If it is shown that the order has been brought to the actual knowledge of the person sought to be affected by it the omission will not prevent him being proceeded against under s. 188 of the Indian Penal Code.—*In re Parbutty Churn Aitch*, I. L. R. 16 Cal. 9.

In *Hochan* v. *Elliot*, 5. W. R. Cr. 4, it was held, that the mere non-service of notice to remove a nuisance was not a sufficient ground for the Court to set aside the Magistrate's order, where it appeared that the parties did not take the objection before the Magistrate, and that they, in fact, admitted knowledge of the existence of the notice and sought to excuse their failure to obey it.

See s. 87, *ante*, as to the publication of proclamations.

Person to whom order is addressed to obey,

or show cause or claim jury.

135. The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

A person who, on receipt of an order by a Magistrate under s. 133, declaring the existence of a right of way over his lands, demands under this section the appointment of a jury to try whether the order was reasonable, is not, by such action, stopped, from afterwards when the order has become absolute, bringing a suit in a Civil Court seeking to establish his right to the exclusive enjoyment of the same lands.—*Per* FIELD, J., in *Mutty Ram Sahoo* v. *Mohi Lall Roy*, I. L. R. 6 Cal. 201: (S. C.) 7 C. L. R. 433: *Chuni Lall* v. *Ram Kishen Saha*, I. L. R. 15 Cal. 640 (F. B.): *Lalji*

Ukheda v. *Joroba, Douba* 8 Bom. (H. C. R. (A. C.) 94 *Nilkanthapa* v. *Magistrate of Sholapore*, I. L. R. 6 Bom. 670 *Balaram Chatrukalal* v. *Magistrate of Taluqua of Igatpuri*, I. L. R. 6 Bom. 672.

An illegal order made under this section may be reversed under s. 439 read with ss. 435 and 423 (c). —*Ram Kala* v. *Ganda*, Punjab Rec., 1885, p. 89.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

Section 188 of the Indian Penal Code is as follows:—"Whoever knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act or to take certain order with certain property in his possession or under his management disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance, or injury to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both, and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

"*Explanation* It is not necessary that the offender shall intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces or is likely to produce harm."

Proceedings under s. 188 of the Penal Code can only be taken subject to the provisions of ss. 195 and 487, *post*.

The order will not become absolute until an opportunity has been given to the persons affected by it to show cause why it should not be carried into effect.—*Reg.* v. *Brojendro Lall*, 21 W. R. Cr. 86.

Where objections had been filed after the time fixed for their presentation, but before the case was taken up, it was held that the Magistrate was not justified on that ground in making the order absolute without hearing the party called upon to show cause.—*In re Bistoo Chunder Chuckerbutty*, 10 W. R. Cr. 27.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

Procedure where he appears to show cause

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

The last clause is new. See *Reg.* v. *Brojendro Lall*, 21 W. R. Cr. 86.

The words of the section are imperative. The Magistrate is bound to take evidence, when the party appears and shows cause, and submits to the judgment of the Court *In re Mahadaji Shadashiv Tilak*, I. L. R. 11 Bom. 375 *Nimae Churn Dey* v. *Kashie Nath Rukhit*, 26 W. R. Cr. 7 *In re Mohur Mandar*, 8 C. L. R. 431 see *Morgan* v. *Leech*, 2 Moo. I. A at p. 435.

If the person to whom notice has been issued does not appear within the time limited, but appears before the case is taken up, the Magistrate cannot proceed without hearing his objections.—*In re Bistoo Chunder Chuckerbutty*, 10 W. R. Cr. 27.

Where the Magistrate, being satisfied that the order is not reasonable and proper, takes no further proceedings, the High Court cannot, as a Court of Revision, enter into a consideration of the evidence upon which he decided so to act.—*In re Shonai Paramanick* v. *Jogendro Shaha*, 1 C. L. R. 486 *In re Issur Chunder Nath*, I. L. R. 8 Cal 883 (S. C.) 11 C. L. R 235 If, in a case of a complaint respecting an obstruction to an alleged public thoroughfare, he finds that the road is not a public thoroughfare, he has no jurisdiction to proceed, and should abstain from carrying out the order for the removal of the obstruction.—*In re Becharam Bhuttacharjee*, 15 W. R. Cr. 67.

Jurisdiction of Civil Court.—It is to be observed that while it is expressly provided that a preliminary order under s. 133 is not to be called in question by a Civil Court and that no suit will lie for anything done in good faith under s. 140 or s. 142, there is no similar provision as to an order which has become absolute under ss. 136 or 137. Accordingly it has been held by a Full Bench, although after some conflict of authority (see the cases cited in I. L. R. 15 Cal. at pp. 469 70), that an order absolute by a Magistrate for the removal of a nuisance from a place held by him to be a highway is not conclusive and final upon the question of highway or no highway, and that a suit will lie by the owner of the land against any one of the public who formally claims the land as a public road to establish his title.—*Chuni Lall* v. *Ram Kishen Sahu*, I. L. R. 15 Cal 460 see *Mutty Ram Sahoo* v. *Mohi Lall Roy*, I. L. R 6 Cal 291 *Lalji Ukheda* v. *Joroba Douba*, 8 Bom. A C. 94 *Nilkanthapa* v. *Magistrate of Sholapore*, I. L. R. 6 Bom. 670 *Balaram Chatrukalal* v. *Magistrate of Taluqua Igatpuri*, I. L. R. 6 Bom. 672.

The Magistrate indicated by this section, *i.e.*, the Magistrate empowered and directed to take the evidence, is the Magistrate who is to issue the notice under s. 140.—*In re Narasimha*, I. L R. 9 Mad. 201. He may be a second class Magistrate to whom the matter is referred under s. 133.—*Ib.*

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

Procedure where he claims jury.

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

The first part of this section corresponds with s. 523, para. 2; the second and third parts with s. 524, para. 1, and s. 523, para. 5, first sentence, of Act X of 1872.

When the person on whom notice has issued applies for a jury, the Magistrate is bound to appoint one, and cannot decide the matter by local inquiry.—*In re Mothoor Chunder Dass*, 2 C. L. R. 509: *Gainda Rai*, Punj. Rec., 1887, p. 38.

Constitution of Jury.—In selecting the members of the jury, the Magistrate should exercise his own independent discretion, and the perons selected by him should not be nominees of the party interested in upholding the Magistrate's order.—*Rajah Shatyanundo Ghosal* v. *The Camperdown Pressing Co.*, 21 W. R. Cr. 43.

Where a person against whom an order had been made for the abatement of a nuisance applied for a jury, and the Magistrate appointed the complainant and two of his witnesses to be, the former the foreman, and the latter the members, of the jury, it was held, that the jury so constituted was not a proper tribunal, and the proceedings were set aside.—*Brindabun Dutt* v. *Dwarka Nath Sein*, 22 W. R. Cr. 47. In another case, where a jury had been properly appointed, and had fully entertained and considered the matter submitted to it, and the individual members had given in their opinions to the foreman to report to the Magistrate, who delayed in making his report, it was held, that the Magistrate could not appoint a second jury to consider the matter afresh.—*Sheikh Nozumuddy* v. *Husim khan*, 21 W. R. Cr. 54. PHEAR, J., said:—"We do not intend to say that, in the event of a jury duly appointed under s. 523 (of Act X of 1872) from some good cause being unable to entertain and determine the matter submitted to it, it is not competent to the Magistrate to appoint a fresh jury. Suppose, for instance, that before the jury had discharged its duties, one of its members died, or suppose the jury became perverse and refused to entertain the matter for which it was appointed, in such cases it may well be that the first order of appointment ought to be considered as having fallen through and become useless, and the Magistrate could have power under s. 523 to appoint a fresh jury." See s. 141, *post*.

A jury is not properly constituted when the Magistrate appoints only the foreman of the jury, allowing the parties to appoint the others.—*Dinonath Chuckerbutty* v. *Hur Govind Pal*, 16 W. R. Cr. 23: (S. C.) 7 B. L. R. Appx. 57. A Magistrate ought not, at the instance of one party, and behind the back of the other, to cancel the appointment of a juror, even if such juror be his own nominee.—*Chunder Nath Sein* v. *Ram Dyal Ghuttuck*, 6 C. L. R. 379: (S. C.) I. L. R. 5 Cal. 875.

Where the duly appointed foreman of a jury, without the knowledge of the Magistrate, substituted another person in the place of one of the jurymen who was sick, and the case proceeded with the jury so freshly constituted, the verdict was set aside.—*Emp.* v. *Bhoirub Chunder Datta*, 10 C. L. R. 193. In the case of *Uma Churn Mundle* v. *Jouhein Sheik*, I. L. R. 11 Cal. 84, one out of five jurors appointed under this section declined to act on the jury; two out of the remainder of the jury were in favour of a temporary order under s. 133 being maintained, while the other two were against its being so maintained. The Deputy Magistrate declined to pass any order under s. 139, as a majority of the jurors did not find the temporary order to be reasonable and proper, and he therefore struck the case off. The High Court considered that the course taken was irregular, and directed that a fresh jury should be summoned and the case inquired into anew.

Verdict.—The last part of s. 523 of Act X of 1872, which empowered the Court to extend the time within which the jury should return the verdict, has been omitted, but it would seem that, under s. 141, *infra*, the Magistrate has power to extend the time. The Code of 1861 provided that the functions of the jury should cease on the day fixed unless the time were extended; and under that Code it was held, where there had been no extension of time and the verdict was returned after the time fixed, that it was illegal and could not be upheld.—*Dinonath Chuckerbutty* v. *Hurgovind Pal*, 16 W. R. Cr. 23: (S. C.) 7 B. L. R. Appx. 57. In such a case it was said the proper course was for the Magistrate to decide the question himself.—*Ibid*: *In re Shamakant Bundopadhya*, 14 W. R. Cr. 69. In Bombay, where a jury failed to return their report within the prescribed time, but subsequently to such time made their report, finding that the obstruction complained of was not, as alleged, in a public thoroughfare, and the Magistrate, treating the report as of no value by reason of its not having been returned in time, issued an order requiring the person to whom the original order was issued to remove the obstruction within fifteen days,—it was held, that the Magistrate ought not to have proceeded to enforce this order. The framers of the Code, it was said, "evidently contemplated that considerations of justice and equity should form the rule of a Magistrate's conduct in dealing with alleged nuisances or unlawful obstructions . . . . The Legislature apparently relied on the sense of justice and discretion of the District Magistrate to remedy any failure of duty on the part of the jury either by an extension of the time fixed for their decision, or by a further reconsideration of the subject."—*Reg.* v. *Dalsukram Hurbhai*, 2 Bom. H. C. R. 407, 411.

For form of Magistrate's order constituting a jury, see Sched. V, No. 17.

Procedure where jury finds Magistrate's order to be reasonable.

139. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

Majority.—The majority of the jury contemplated by this section is a majority of the jurors appointed, and not merely such of them as choose to attend the meetings held.—*Durga Churn Das* v. *Shashi Bhusan Guha*, I. L. R. 13 Cal. 275: see *Uma Churn Mundle* v. *Sohein Sheikh*, I. L. R. 11 Cal. 84. In the case of *Pelumber Jugy* v. *Nasaruddy*, 25 W. R. Cr. 4, only two of the alleged majority of three (in a jury of five) went and saw the place, and the third formed his opinion solely on what had been told him by the other two. It was held that the majority was not a legal majority. GLOVER, J., said: "The law requires a juryman to exercise his own understanding on the case submitted to him, and to decide on evidence. Here the third juryman did neither. He followed blindly the opinion of his fellows without exercising any discretion of his own." But where a party objects to the verdict of a jury, he ought to give the Magistrate reasonable *primâ facie* ground for the opinion either that the jury did not in fact apply a judicial discretion to the case, or that the verdict was such as a jury could not have arrived at by a proper exercise of their discretion upon the materials before them.—*Bindabun Chunder Dutt* v. *Dwarka Nath Sen*, 23 W. R. Cr. 15.

The powers embodied in sections 133–9 with regard to the obstruction of public ways are not intended to be exercised where there is a *bonâ fide* dispute as to the existence of the public right. Where there is such a dispute, the Court should pass no order under these sections until the public right has been established by proper legal proceedings, civil or criminal.—*Basaruddin Bhinah* v. *Baha Rali*, I. L. R. 11 Cal. 8.

A Magistrate is bound to be guided by the decision of the jury, but if their meaning is not clear he may call upon them to find expressly whether the order was reasonable and proper or not.—*Reg.* v. *Pholes Mullik*, 1 W. R. Cr. 28. See further note to preceding section.

Procedure on order being made absolute.

140. When an order has been made absolute under section 136, section 137, or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequences of disobedience to order.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under the section.

Section 188 of the Indian Penal Code is as follows:—"Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

"*Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces or is likely to produce harm."

If an order has duly become absolute under s. 136 and the person called upon is proceeded against under s. 188 of the Penal Code, he is not entitled to go behind the order and show that it was one which ought not to have been made.—*Emp. v. Narayan*, I. L. R. 12 Mad. 475.

Where a party objects to the verdict of a jury, he ought to give the Magistrate reasonable *primâ facie* ground for the opinion either that the jury did not in fact apply a judicial discretion

to the case, or that the verdict was such as a jury could not have arrived at by a proper exercise of their discretion upon the materials before them.—*Bindabun Chunder Dutt* v. *Dwarka Nath Sen*, 23 W. R. Cr. 15.

Good Faith.—According to s. 52 of the Indian Penal Code, "nothing is said to be done or believed in good faith, which is done or believed without due care and attention." See *Shea Surn Suhai* v. *Mahomed Fuzil Khan*, 10 W. R. Cr. 20 · *Nitkanthapa Malkapa* v. *Magistrate (First class) in charge of the Sholapur Taluka*, I. L. R. 6 Bom. 672 : and *Baluram* v. *Magistrate in charge of Taluk Igatpuri*, I. L. R. 6 Bom. 672.

The word suit in this section appears to mean a suit for damages.—*Chuni Lall* v. *Ramkishen Sahu*, I. L. R. 15 Cal. 460 (F. B.) *per* WILSON, J., and the persons aggrieved by an order under this Chapter can sue the parties who instituted the proceedings before the Magistrate for damages only, where they can show that, in taking such proceedings, they were actuated by malicious motives, or intended wrongfully to injure.—*Chintamani Bapooha* v. *Digamber Mitter*, 2 B. L. R. (S. N.), xv, *per* PEACOCK and HOBHOUSE, JJ.

For form of Magistrate's notice and peremptory order after the finding by a jury, see Sched. V, No. 18.

As to the mode of service of notice of orders under the Chapter per *Emp.* v. *Narayana*, I. L. R. 12 Mad. 475, see also s. 134, *supra*, and notes thereto.

The Magistrate who is to issue the notice under this section is presumably the Magistrate indicated by the sections it refers to.—*In re Narasimha*, I. L. R. 9 Mad. 201. He may be a second class Magistrate before whom the person against whom the order is made is directed to appear, and has power to pass final orders under s. 140.—*Ib.*

Proceedure on failure to appoint jury or omission to return verdict.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Whenever, for any cause, the constitution of the jurors is changed, and a fresh juror is appointed, the Magistrate must fix a time within which their award is to be made.—*In re Shama Kant Bundopadhyha*, 14 W. R. Cr. 69.

See the remarks of the Court in *Dalsukram* v. *Hari Bhai*, 2 Bom. H. C. R. 411, where the report of the jury was returned after the original time fixed, and the Magistrate made an order disregarding the finding therein. See also notes to the preceding sections.

Injunction pending inquiry.

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

No order could be made, it was held, under s. 528 of Act X of 1872, unless there was imminent danger or fear of injury of a serious kind to the public involved in the case; and where a Magistrate, who had made an order under s. 521 of the former Code, subsequently directed further inquiry to be made, it was held that he must be considered to have abandoned his proceedings under the former section, and that he ought to have proceeded under s. 525 (ss. 136 and 137 of this Act), instead of fining the party charged under s. 188 of the Penal Code.—*Reg.* v. *Brojendro Lall*, 21 R. Cr. 86.

So, in the case of *Reg.* v. *Rajah Indoobhooshun Deb Roy*, 1 W. R. Cr. 8, it was held, that a Magistrate is only authorized to take immediate measures to prevent imminent danger pending the inquiry of a jury, but not where no jury has been appointed and after the danger has passed away.

Good Faith.—As to what is good faith, see note to s. 140, *supra*.

Suit.—The word suit seems to refer to a suit for damages.—*Chuni Lall* v. *Ram Kishen Sahu*, I. L. R. 15 Cal. 460, *per* WILSON, J.

For form of injunction to provide against imminent danger pending inquiry by jury, see Sched. V, No. 19.

Magistrate may prohibit repetition or continuance of public nuisances

143. A District Magistrate or Subdivisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

Under the corresponding section of the former Code (s 519) the persons competent to act were "a Magistrate of the District, a Magistrate of a Division of a District, or any Magistrate specially empowered."

As to Magistrates empowered in Bombay to act under the corresponding section of the former Code, see *Bom. Gazette*, 1872, p. 1325. *Ibid*, 1873, p. 16

Before a person can legally be punished for disobedience to an order under this section, some evidence must be taken that he has disobeyed the order of the Magistrate, and that such disobedience had produced, or was likely to produce, harm.—*Reg.* v. *Shabuckram Bukooler*, 2 W. R. Cr. 32. The section contemplates an order addressed to a particular person.—*Emp.* v. *Jokhu*, I L. R. 8 All. 99. See note to next section.

By s. 268 of the Indian Penal Code "a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage." And by s. 291 of the Indian Penal Code, "whoever repeats or continues a public nuisance having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both." In order to support a conviction under that section, there must be proof of an injunction to the accused individually against repeating or continuing some particular public nuisance.—*Emp.* v *Jokhu*, I. L. R. 8 All. 99.

For form of Magistrate's order prohibiting the repetition, &c., of a nuisance, see Sched. V, No. 20. See also s. 176.

If any Magistrate, not being empowered in this behalf, prohibits the repetition or continuance of a public nuisance, his proceedings are void.—*S.* 530 (*h*), *infra*.

Orders made under this section are not proceedings within the meaning of s. 435, *infra*.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

Power to issue order absolute at once in urgent cases of nuisance

144. In cases where, in the opinion of a District Magistrate, a Subdivisional Magistrate or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

An order under this section may in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex-parte*.

An order under this section may be directed to a particular individual or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

This section reproduces s. 518 of Act X of 1872, with certain alterations and additions.

The last clause of the section is new. It seems to have been suggested by the Full Bench case of *Gopi Mohun Moulik* v. *Taramoni Chowdhrani*, I. L. R. 5 Cal. 7 : (S. C.) 4 C. L. R. 309. There an order by a Magistrate prohibiting one of two rival haut proprietors from holding for the future his haut on Tuesdays and Fridays, was held to be an order in the nature of a perpetual injunction, and therefore made without jurisdiction.

Presidency Towns.—It will be observed that this section does not in terms apply to Presidency Magistrates, but in 1891 the then Chief Presidency Magistrate and the Presidency Magistrate of the Northern Division of the Town of Calcutta were vested with powers under this section—*Calcutta Gazette* 1891, p. 1058. District Magistrates, Subdivisional Magistrates, or other Magistrates specially empowered by the Local Government or District Magistrates only are authorized to act under the section.

If a Magistrate not empowered in that behalf makes an order under this section, such order will be void.—s. 530 (*i*).

The section is to be resorted to only where a "speedy remedy is desirable." This is in accordance with Explanation I to s. 518 of Act X of 1872.

The provision making it necessary that the order should contain a statement of the material facts of the case, is new. It is in accordance with the opinion expressed by PHEAR, J., in the case of *Hari Mohun Malo*, 1 B. L. R. (A. Cr.) 20.

To sustain a charge under s. 188 of the Indian Penal Code, the order must be in writing.—*In re Pitamber Dey*, 17 W. R. Cr. 57. The provision as to the manner of serving the notice is also new.

A power not contained in the former Code is given by the section to any Magistrate, enabling him to rescind or alter any order made under the section by any other Magistrate subordinate to him. It follows the ruling in the case of *Mohun Sirdar* v. *Obhoy Churn Mookopadyah*, 13 W. R. Cr. 72, where it was held that a Magistrate who had passed an improper order acted rightly in recalling it.

A Magistrate's power to deal with public nuisances under this Chapter (XI) is only properly applicable to temporary orders in urgent cases. It is only in such cases that an order may be made *ex-parte*, and any exception is allowed to the general rule that it shall be directed to a particular individual. In such emergent cases an order may, under this section, be directed to the public generally when frequenting or visiting a *particular* place to abstain from a certain act, but this provision does not apply to a proclamation directed, not to the public generally frequenting or visiting a particular place, but to a portion of the community.—*Emp.* v. *Jokhu*, I. L. R. 8 All. 99 : *Emp.* v. *Lakhmidas Makandas*, I. L. R. 14 Bom. 165.

In the case of *Lakhmidas Mukandas*, I. L. R. 14 Bom. 165, a District Magistrate owing to the prevalence of cholera issued an order in the form of a proclamation under s. 144 forbiding the public generally to give caste dinners in the city of Broach. The accused a few days after the issue of the order gave a feast in a private house to about 500 people of his caste, and he was thereupon prosecuted and convicted under s. 188 of Penal Code. The High Court held the order both in its substance and in its manner of publication was illegal and set aside the conviction. See *Emp.* v. *Harilal*, I. L. R. 14 Bom. 180.

An order to abstain from interference with the management, worship, or administration of a temple and its property is an order to abstain from a *certain act* within the meaning of the section.—*E. V. Ramanuja Jeeyarsvami* v. *V. Ramanuja Jeeyar*, I. L. R. 3 Mad. 354 ; but an order prohibiting a person from collecting rent directly or indirectly from the ryots of two specified pergunnahs is not an order prohibiting acts which come within the meaning of the words a "certain act."—*Abayeswari Debi* v. *Sidheswari Debi*, I. L. R. 16 Cal. 80.

Procedure.—Under this section, as under the corresponding sections of the former Codes of Criminal Procedure, action may be taken, when, in the opinion of the Magistrate empowered to act under it, a speedy remedy is desirable. Under the Code of 1861 it was held, that the Magistrate was not justified in taking proceedings on the mere report of a constable ; but was bound in the first instance to take evidence, if necessary, on both sides.—*Reg.* v. *Bhyro Dayal Singh*, 3 B. L. R. App. Cr. 5. (S.C.) 11 W. R. Cr. 46. And under the Code of 1872 it was held, that, in the absence of circumstances which showed that a speedy remedy was necessary, and that the delay which would be occasioned by a resort to the procedure contained in other sections of that Code would occasion a greater evil than that which would be suffered by the person on whom the order might be made, the Magistrate had no power to act, and any order made by him might be set aside.—*In re Krishna Mohun Bysack*, 1 C. L. R. 58 : *Banee Madhub Ghose* v. *Wooma Nath Roy Chowdhry*, 21 W. R. Cr. 26.

It is not necessary that the information on which a Magistrate acts under this section should be on record. The circumstances on which he is required to act are frequently such that action must frequently be taken upon oral information.—*E. V. Ramanuja Jeeyar Svami* v. *V. Ramanuja Jeeyar*, I. L. R. 3 Mad. 354.

Jurisdiction.—A Magistrate's jurisdiction is confined to cases where there has been annoyance or injury, &c., to any person lawfully employed, or danger to human life, health or safety, or when there is a probability of a riot or affray.—*Sreenath Dutt* v. *Unnoda Churn Dutt*, 23 W. R. Cr. 34. In a case of dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power under this section to make an order that no rents shall be collected until such time as the right and title of both parties shall have been established by order of a competent Court.—*Prosunno Coomar Chatterjee* v. *Emp.* 8 C. L. R., 231. In the case of *Abayeswari Debi* v. *Sidheswari Debi*, I. L. R. 16 Cal. 80, an order prohibiting a person from collecting any rent or attempting to collect any rent directly or indirectly from the ryots of two specified pergunnahs was set aside as the acts which the person to whom the order was directed to abstain from did not come within the meaning of the words "a certain act." See *Ananda Chandra Bhuttacharjee* v.

Stephen, I L. R 10 Cal. 127. See *E. V, Ramanuja Jeeyarsvami* v. *V Ramanuja*, I. L. R. 3. Mad. 354.

In *Bradley* v. *Jamieson*, 11 C. L. R. 414 (S. C.) I. L, R. 6 Cal 580, an order made under this section was subsequently reviewed by the Magistrate who passed it. On the review he struck off the case, remarking that the order was bad, and referred the matter to his superior officer. The latter having declined to interfere, stating that he saw nothing illegal in the order, the Magistrate by an order revived his former order. The High Court held that there having been no fresh proceeding, the order reviving the other was bad.

The section has no application to cases which refer to collection of market-dues (*Reg*, v. *Subun Singh*, 23 W. R. Cr. 57) nor to a private dispute between two persons relative to a path.—*Nilkomul Mookhopadhya* v. *Anund Chunder Lushkur*, 19 W. R. Cr. 6.

In the absence of evidence showing that a riot or affray is likely to occur, the Magistrate is not competent to direct a person to remove a wall erected on land alleged to belong to another per on.—*Radhakishore* v. *Giridharee Sahee*, 13 W. R. Cr. 19 In the case of *Goshain Luchmun Pershad Pooree* v. *Pohoop Narain Pooree*, 24 W. R. Cr. 30, it was held, that before a prohibitory order under s. 518 of Act X of 1872 could be made, there ought to be information and evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or affray.

A Magistrate has no jurisdiction to make an order under this section merely for the protection of property Such an order can only be made in order to prevent obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.—*In re Priyag Singh*, I. L R. 9 Cal. 103.

The third clause of this section, which, in certain cases, authorizes the Magistrate to pass an order *ex parte*, seems to contemplate that ordinarily an order under the section should not be made without an opportunity being afforded to the person against whom it is proposed to make it to show cause why it should not be passed. Under s. 62 of the Code of 1861 it was held, that a Magis trate could not pass an order without first calling on the defendant to show cause why the order should not be passed, and taking any evidence which the defendant might adduce.—*Rai Luchmee and Sm.th*, 14 W. R Cr 17 *In re Harimohun Malo*, 1 B. L. R. App. Cr. 20 *Reg.* v. *Ram Chundra Mookerjee*, 5 B. L. R. 131.

By the last clause of the section no order shall remain in force for more than two months unless the Local Government otherwise directs. This clause, as already pointed out, appears to have been suggested by the case of *Gopi Mohun Moulik* v. *Taramoni Chowdhrani*, I. L. R 5 Cal. 7 (S. C.) 4 C. L. R 309, in which a Full Bench consisting of twelve Judges held, that an order in the nature of a perpetual injunction was without jurisdiction. In a subsequent case, an order directing one of two rival haut proprietors to remove his haut to such a distance from the other so as to render it useless for the purpose for which it was established, was held to come within the purview of the decision in the case of *Gopi Mohun Moulik* v. *Taramoni Chowdhrani*, and to be without jurisdiction.—*Shurut Chunder Banerjee* v. *Bama Churn Mookerjee*, 4 C. L. R. 410.

A Magistrate has no power under this section to issue an order which is by its very nature irrevocable, such as an order to cut down trees. All that he has power to do is to compel the owner of property "to take certain order with it."—*Uttam Chunder Chatterjee* v. *Ram Chunder Chatterjee*, 13 W. R. Cr. 72.

It was the intention of the Legislature to give the Magistrate full and ample powers to restrain any person from doing any act, or to command him to hold any property in his possession subject to any condition, whenever such Magistrate shall consider that such a course of procedure is likely to prevent, or even tends to prevent a riot or an affray. . . . . It is quite within his power to modify the right of persons to enjoy their property in a lawful manner, at least for a temporary period, by imposing upon the owner of property such conditions as he, after taking into consideration all the facts and surrounding circumstances of each particular case, may consider necessary to prevent a riot or affray Every individual right is, to a certain, extent, subject to the general interest of society, and the Legislature has invested the Magistrate with powers sufficient to cover a case like the one mentioned in the order of reference.—*Bykuntram Shaha Roy* v *Mayan*, 10 B. L. R. 434 (S. C.) 18 W R. Cr. (F. B) 47, *per* COUCH, C J In this case the Magistrate was held to have acted rightly in issuing an order, prohibiting a landholder from holding a haut on particular days The decision in that case must now be read with reference to the last clause of this section and the case of *Gopi Mohun Moulik* v *Taramoni Chowdhrani*, I L. R 5 Cal. 7 (S. C.) 4 C L. R., 309. See *Bholanath Bose* v. *Konuruddin*, 20 W. R. Cr. 53. A Magistrate cannot interfere with the right of a landholder to establish hauts within his estate and to hold them on any day most convenient to him.—*Shesh Chunder Bhuttacharjee* v. *Saadut Ally Khan*, 4 W. R. Cr. 12. Nor has he power to pass an order in the nature of an injunction warning owners of cattle to take proper care of them on pain of punishment in case of disobedience.—*In the matter of Amtraddi*, 3 B. L. R. App. Cr. 45 see *Reg.* v. *Mazafar Khalfa*, 9 B. L. R. Appx. 36.

Where a Magistrate summarily directed the owner of a tank in the dry bed of a river to destroy the banks of the tank, on the ground that they were an obstruction to the public in the lawful enjoyment of the river, and that the stopping of the water interfered with the health of the public, and it appeared that the tank had been in the defendant's possession for six years, the High Court, under the circumstances, set aside the order.—*In re Gholam Durbesh*, 10 W. R. Cr. 36

A Magistrate cannot, in general terms, forbid two parties to use any musical instrument in the neighbourhood of each other, though he may forbid their doing so for the purpose of mutual annoyance.—*In re Ram Chunder Goer Gossain*, 6 W. R Cr. 40.

In the case of *Muthiahi Chetti* v *Bapun Saib*, I. L. R 2 Mad. 140, an order passed by the Magistrate, directing that all music should cease when any procession is passing a certain place of worship was held to be *ultra vires*. The Court (TURNER, C. J., and MUTTUSAMI AYYAR, J.) said 'At times the rights of the several sects to the undisturbed exercise of their religious observances may come into conflict without any criminal intention. In such cases mutual toleration is and must be the only and the proper rule. It has thus to be determined how far the conflicting rights interfere with and necessarily modify each other. It is, on the one hand, a right recognised by law that an assembly lawfully engaged in the performance of religious worship and religious ceremonies shall not be disturbed. It is, on the other hand, a right recognised by law that persons may for a lawful purpose, whether civil or religious, use a common highway by parading it, attended by music, so that they do not obstruct the use of it by other persons. If persons passing in procession, attended by music, pass a place in which others are assembled and engaged in public worship which the music would tend to disturb, it is the duty of the persons composing the procession to refrain from such disturbance, but assemblies for purposes of worship are held scarcely in any place at all hours, and generally at appointed hours, and therefore it is unnecessary that there should be a rule that persons should not at any time pass along a high road in the neighbourhood of a recognised place of worship if attended by music. If indeed the procession be of a religious character, the prohibition of it may be as real an interference with the free exercise of religion as allowing it to proceed past an assembly engaged in worship attended with such circumstances as to disturb that worship, and if no religious procession is to be allowed to pass a recognised place of worship, whether persons are or are not at the time there assembled and engaged in religious worship, the members of a numerous sect might close every highway to the processions of a sect to which they are opposed by erecting in the neighbourhood of each highway a place of worship.

The law, in the restriction it imposes on processions of whatever character, does not go beyond the necessity. . . . . For the preservation of the public peace, he (a Magistrate) has a special authority,—an authority limited to special occasions. His first duty is to secure to every person the enjoyment of his rights under the law, and by measures of precaution to deter those who seek to invade the rights of others, but if he apprehends that the lawful exercise of a right may lead to civil tumult, and he doubts whether he has available a sufficient force to repress such tumult or to render it innocuous, regard for the public welfare is allowed to override temporarily the private right, and the Magistrate is authorized to interdict its exercise. The duration of this authority is co-extensive with the emergency that justified the exercise of the authority."

The duties of a Magistrate in cases where the public peace is likely to be disturbed by one sect attempting to disturb another using public streets is fully discussed in *Sundram Chetti* and *Punnusami Chetti* v. *Reg.* I. L. R 6 Mad 203, where the Court (TURNER, C. J., INNES and KINDERSLEY, JJ.) examined and approved the principles laid down in the case last quoted.

In dealing with the civil rights of a subject under s. 518 of Act X of 1872, it was said to be incumbent on the Magistrate to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient inquiry as to whether the act prohibited is likely to cause a breach of the peace and is within or is in excess of the legal right of the person forbidden to do it, and, if necessary, to deal with the case under the other provisions of the Criminal Procedure Code, which enable him to meet cases of a probable breach of the peace.—*In re Abdool* v *Lucky Narain Mundul*, I. L. R. 5 Cal. 132, *per* AINSLIE, J.

Where an order on the face of it appears to have been made without jurisdiction, no subsequent explanation can make it valid.—*Ibid, per* BROUGHTON J.

In the case of *Reg.* v *Ramchudran*, 6 Bom. H. C. R. 36, an order under s. 62 of Act XXV of 1861 by a Magistrate, leaving the hereditary priests of a temple to widen and heighten the doorway of the temple in order to prevent danger from overcrowding was upheld

Service of the Order.—Under a notification of the Bengal Government, when personal service cannot be effected the order is to be notified by beat of drum—*Calcutta Gazette*, 1883 Part I, p. 245. It has been held that the terms of s. 144 and of the notification are directory and ought to be followed, but that the omission to follow them directions does not invalidate the order. Accordingly if an order has been duly made and promulgated although not strictly in accordance with the terms of the law and has been brought to the notice of the person sought to be affected by it, that person may be proceeded against under s. 188 of the Penal Code for disobedience.—*In re Parbutty Aitch*, I. L. R 16 Cal 9. see *Emp.* v. *Narayanana*, I. L R 12 Mad 475 When an order was issued in the form of a proclamation and posted in different parts of the city in which it was issued it was held the manner of publication was illegal.—*Emp* v. *Lakhmidas Makanda*, I. L. R 14 Bom. 165.

Revision, etc.—Where an order is duly passed under this section, the High Court cannot interfere under s. 15 of the Charter Act.—*E. V Ramanuja Jeyarsvami* v. *V Ramanuja Jeyar*, I. L R 3 Mad. 354 *In re Chunder Nath Sen*, I. L. R. 2 Cal. (F. B.) 293 *Bradley* v. *Jameson*, I. L R 8 Cal. 580 (S. C.) 11 C. L. R. 414. But where an order is passed without jurisdiction, the High Court may set it aside.—*Gopi Mohun Moulik* v. *Taramoni Chowdhrani*, I. L. R 5 Cal (F B) 7 (S C) 4 C. L. R (F B) 309 *In re Krishna Mohun Byack*, 1 C. L. R 58 *Banee Madhub Ghose* v. *Wooma Nath Roy*, 21 W. R Cr. 26 *Chunder Coomar Rai* v. *Omesh Chunder*, 22 W. R Cr 78 *Sreenath Dutt* v. *Unnada Churn Dutt*, 23 W R Cr. 34 *Goshai Luchmun Pershad Pooree* v. *Pohoop Narain Pooree*, 24 W R. Cr 30 *Abayeswari Debia* v. *Sudheswari Debi*, I. L. R. 16 Cal 80 *Ananda Chandra Bhutiacharjee* v. *Carr Stephen*, I L. R. 19 Cal. 127 In the case of *Kedarnath* v *Raghoonath* 6 N. W P. H C R 104, it was held that the legality of an order made by a Magistrate under s 62 of Act XXV of 1861 might be questioned in a Civil Court.

In the case of *E V Ramanuja Jeyarsvami* v *V Ramanuja Jeyar*, I. L R 3 Mad 354, where an order was passed under s. 518 of Act X of 1872 by a Magistrate after considering various magisterial orders, police reports, and complaints, restraining one of the parties from interfering with the management, worship or administration of the Nanguneri Matam and its appurtenant estates, INNES, J., said "All that the High Court can do is to see that the Magistrate had jurisdiction to pass the order under s. 518 (144 of the present Code). If he had, there is no power of interference.

It was contended there was no such emergency as to call for an order under s. 518, and that the order was bad, as being not confined to one act but extended to several acts. We think we must take the recitals in the order itself as sufficient to show that the Magistrate *bonâ fide* believed from information before him that the danger of a disturbance through the action of the petitioner was imminent."

It is to be borne in mind, however, that whenever it is sought to enforce orders by the infliction of penalties, it is open to Courts to step in and see whether the orders were properly made or not. It is also to be borne in mind that, although the Criminal Procedure Code contains provisions for the removal of obstructions in public thoroughfares by summary proceedings before a Magistrate, there is nothing in these provisions which deprives a private individual of the redress which the law affords him under such circumstances by means of a civil suit—*Ramkoomar Singh v. Sahebzada Roy*, I. L. R. 3 Cal. (F. B.) 20.

Orders made under this section, it is to be observed, are not proceedings within the meaning of s. 435, *infra*.

For form of Magistrate's order to prevent obstruction, riot, etc., see Sched. V, No. 21.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

145. Whenever a District Magistrate, Subdivisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Inquiry as to possession.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Party in possession to retain possession until legally evicted.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

While the corresponding section (530) of the former Act applied to cases where a Magistrate was satisfied that "a dispute likely to cause a breach of the peace exists concerning land or the boundaries of any land, or concerning any houses, water, fisheries, crops or other produce of land," this section embraces a similar dispute "concerning any tangible immoveable property or the boundaries thereof." Under the former Act the Magistrate was required to record a proceeding, stating the grounds on which he was satisfied of the likelihood of a breach of the peace and to call upon the parties to attend before him. The present section directs that the grounds on which the Magistrate is so satisfied and the requisition to the parties to attend shall be embodied in the same order.

The direction in the second paragraph to the Magistrate to peruse the statements put in by the parties, which is more precise in the procedure laid down than in the corresponding paragraph in s. 530 of Act X of 1872, is new.

The last paragraph of the section is also new.

Presidency Towns —It will be observed that Presidency Magistrates are not included among the Magistrates who may act under this section

The object of this section is to prevent a breach of the peace by retaining in possession the party already there until such time as the Civil Court can pronounce on the two conflicting claims In the mofussil when a dispute arises as to land too frequent resort is had to the provisions of this section each party being anxious to have an order declaring himself to be in possession as against the other so as to force him to prove his title as plaintiff in a civil suit Before instituting proceedings therefore it is the duty of the Magistrate to satisfy himself that there is really a dispute likely to cause a breach of the peace In fact a Magistrate cannot be too careful in acting so as to guard against the danger of assuming jurisdiction in cases not really contemplated by the section where the suggested apprehension is little more than colourable and made to induce the Court to deal with matters properly cognizable by the Civil Courts See *In re Obhoy Chun tra Mukerjee* v *Mahomed Sabir*, 13 C L R 410 (S C) I L R 10 Cal 78 Where the decree of the Civil Court has been passed, the right as between the litigants is decided and there is no more place for a summary order which proceeds not upon title but mere possession —*Ranee punge Coal Association* v *Hem Lall Ghatwal* 24 W R Cr 17 See *Rai Mohun Roy* v *Wise* 16 W R Cr 24 *In re Govind Chundra Mottro* I L R 6 Cal 835 (S C) 8 C L R 217

It is the likelihood of a breach of the peace and the necessity for immediate action which alone warrant action by the Magistrate under this section —*In re Kumud Narain Bhoop* I L R 4 Cal 650 (S C) 4 C L R 551 And where there is no present danger of a breach of the peace, the fact that a breach of the peace is likely to take place at a future time will not justify a Magistrate in making an order under the section —*In re Umachura Maitra* 7 C L R 352 but see *Ray* v *Mohesh Chunder Roy* 24 W R Cr 67 So it is not sufficient to justify a Magistrate in interfering that it is *probable* that a breach of the peace may occur if proceedings be not taken, but he must be satisfied that there exists a dispute which is *likely to intuce a breach of the peace* — *Damoodur Bidyathur Mohapatro* v *Syamanund Dey* I L R 7 Cal 385 (S C) 8 C L R 514 see the cases there cited and also the case of *In re Obhoy Chun tra Mukerjee* v *Mahomed Sabir*, 13 I L R 410 (S C) I L R 10 Cal 78

The holding of an inquiry under this Chapter is a matter entirely within the discretion of the Magistrate of the District or of a Division of a District and the High Court has no authority to require him to proceed under this Chapter The taking of security for keeping the peace is also a matter within the discretion of the Magistrate, provided he has materials upon which to proceed —*Kali Prosunno Roy*, 23 W R Cr 58

Procedure —In the case of *Hurendro Narain Singh*, I L R 11 Cal 762 PRINSEP and GRANT, JJ hold that proceedings under this section should on all points of procedure be regarded as summons cases and that although it is discretionary with a Magistrate to issue a summons on a witness in such a case yet when any one of the parties applies at a proper time for process to secure the attendance of his witness the Magistrate should not arbitrarily refuse his assistance, but where such refusal is made, it is incumbent on the Magistrate to record his reasons for refusing But it must be borne in mind that s 350 *post* provides that in all inquiries under this Chapter the evidence of each witness must be taken down in the writing and language of the Court by the Magistrate or in his presence and hearing and under his personal direction and superintendence, and signed by the Magistrate Section 355 *post* deals with the manner in which the evidence in summons cases must be taken

Jurisdiction —It was held that a Bench of Magistrates had no power to deal with cases coming under s 530 of Act X of 1872 —*Sufferuddin* v *Ibrahim* I L R 3 Cal 754 Now by s 15, *supra*, it is provided that the Local Government may invest a Bench of Magistrates with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to *exercise* such powers in such cases or such classes of cases only and within such local limits as the Local Government thinks fit and except as otherwise provided by any order of the Local Government every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any of its members who is present taking part in the proceedings as a member of the Bench belongs and as far as possible, shall, for the purposes of this Code, be deemed a Magistrate of the first class

It has been held in many cases that the grounds for the Magistrate's belief as to the existence of the likelihood of a breach of the peace must be recorded —*In re Kumud Narain Bhoop*, I L R 4 Cal 650 (S C) 3 C L R 551 and that unless the proceedings recorded by the Magistrate under this section are based upon materials which disclose sufficient ground for considering that a breach of the peace is imminent, the order calling upon the parties to attend in Court may be set aside as without jurisdiction —*Chunder Madhub Ghose* v *Juggat Chunder Sen* 4 C L R 483 *Budhu* v *Emp* Punjab Rec 1885 p 17 *Sheikh Mungloo* v *Durga Narain Nag* 25 W R Cr 74 In the last mentioned case the Court dissented from the decision in the case of *Gour Mohun Mahjee* v *Dolub Mahjee* 22 W R Cr 81 where it was laid down that when a person summoned to answer to a charge of criminal trespass appeared and filed a written statement and the Magistrate proceeded accordingly without recording a proceeding under s 530 of Act X of 1872 the irregularity was covered by s 283 (s 537 of this Act) the rule therein laid down being intended to extend to all proceedings before a Magistrate See *In re Kishores Mohun Roy* 19 W R Cr 10 *Raja Run Bahadur* v *Ranee Tilsooree Koer* 22 W R 79

It seems now from the case of *Goluck Chun tra Pal* v *Kali Charan De* 1 L R 13 Cal 175, that a reference by a Magistrate to a police report which sets out the probability of a breach of the peace is a sufficient statement of the reasons for the Magistrate being satisfied of the existence of a dispute likely to cause a breach of the peace within the meaning of this section

While in the case of *Harvey* v *Brice* 4 W R 26 it was held that the omission on the part of a Magistrate to record a proceeding in a case of disputed possession of land was not a mere informality in procedure but rendered the whole of his proceedings illegal in another case, under the

Code of 1861, it was considered that the omission to record a preliminary order stating that the Magistrate was satisfied that a dispute likely to induce a breach of the peace existed, did not invalidate an order passed, unless it could be shown that the party was not prejudiced by the omission.—*Mad H C Pro. 9th August* 1870, *Weir*, p. 26. So, where a Magistrate had the report of a Police officer before him, it was held that the omission to record a proceeding, though a technical irregularity, was not sufficient to warrant interference with his final order—*In re Mussamut Zuhoorun*, 2 Wym. Cr. Rul, I. The later cases, however, quoted below seem to show that the omission is not a mere technical irregularity.

When the contending parties are admittedly in joint possession of disputed lands, it was held, under the former Code that the Magistrate has no jurisdiction to determine whether one of them might make use of the land in such a manner as to cause annoyance to the other.—*In re Rajkoomar Singh*, 2 C. L R 62.

Tangible Immoveable Property.—Section 530 of Act X of 1872 was held not to refer to a dispute as to the right to collect the rents of a joint undivided estate in a certain proportion.—*Ramrunjinee Dossee* v. *Gooroodass Roy*, 18 W. R Cr. 30 see *Beni Narain* v. *Achurj Nath*, I. L R. 5 All. 607, nor to disputes as to what collections one of the parties has made, and what rents he is entitled to collect under a decree.—*Puddomonee Dossee* v. *Juggodumba Dossee*, 25 W. R Cr. 2. So a dispute between a zemindar and his lessee as to the right to receive rent was held by the Madras High Court not to be within the meaning of s. 530.—*Mad. H. C. Pro., 11th February*, 1873; *Weir*, p 27. It was, however, held in *Sutherland* v. *Crowdy*, 18 W R. Cr. 11 (S. C.) 9. B L. R. 420 *Hudrak Narain Singh* v *Luchmi Bux Roy*, 5 C. L. R. 287 (followed in *Narain Das* v. *Emp*, Punjab Rec, 1884, p 35) and other cases, that the right to collect rents from ryots did come within the purview of s. 530 of Act X of 1872. The present section, as already pointed out, deals not with disputes "concerning any land or the boundaries of any land or concerning any houses, water, fish eries, crops or other produce of land," but only with disputes "concerning any tangible immoveable property or the boundaries thereof," and it has been held that a dispute as to the rights to collect rents is a dispute concerning tangible immoveable property within the meaning of this section. – *Pramatha Bhusana Roy* v. *Doorga Churn Bhuttacharjee*, I L R 11 Cal 413. *Ramasami* v. *Danakoti Ammal*, I L R 12 Mad 88. *In re Sarbananda Basu*, I L R 15 Cal 527; *Abayeswari Debi* v. *Shitheswari Debi*, I. L R 16 Cal. 513 In the case of *Pramatha Bhusana Roy* v. *Doorga Churn Bhuttacharjee*, I. L. R 11 Cal 413, an opinion was expressed that a dispute as to a *julkur* or right of fishery was not a dispute concerning tangible immoveable property, and in the case of *Krishna Dhone Dutt* v. *Trotlokya Nath Biswas*, I. L R. 12 Cal 539, it was actually held that it was not such a dispute. It was also held in *Anund Moyi Dabia* v. *Shurnomoyi*, I. L. R. 13 Cal. 179 that a *julkur* is not 'tangible immoveable property.'

Contents of Order.—The order as to the grounds on which the Magistrate is satisfied as to the likelihood of a breach of the peace, prescribed by this section, should plainly state the grounds of the Magistrate's being satisfied that a dispute likely to induce a breach of the peace exists concerning certain specified land within his jurisdiction. Information must be referred to, and facts must be stated, by the Magistrate as facts believed by him to exist, such as to afford on the face of the roobokaree rational grounds for the belief that a dispute likely to induce a breach of the peace existed with regard to certain specified property. In arriving at an opinion with regard to the facts which the Magistrate gives as the ground of his belief, he must form his judgment by the exercise of a judicial discretion upon some sort of materials The Code does not limit those materials to evidence given on oath, excepting that they must appear to be materials such as would justify a judicial officer in relying upon them. Unless the Magistrate is in a position in this way to present clear and rational grounds capable of being estimated according to their merits, on the mere statement of them he has no legal foundation on which to base his investigation *inter partes* relative to possession—*In re Kishoree Mohun Roy*, 19 W. R. Cr. 10, see *In re Sabhee Singh*, 6 W. R. 50 *Dewan Elahee Newaz Khan* v. *Jukrarunnissa*, 5 W. R. Cr. 14 (S. C.) 1 Wym. Cr. Rul., 17

In the case of *Bisseshur Narain Mahtah*, Petitioner, 8 W R. Cr. 83, distinguishing *Amrit Nath Jha* v *Ahmed Raza*, 6 W. R. Cr. 61, it was considered that the provisions of this section had been substantially complied with when the Magistrate stated that there was a long standing dispute which was likely to induce a breach of the peace and recorded that, in his opinion the only way of bringing that dispute to a satisfactory settlement was by proceeding under the section. See also *Durvao Singh* v. *Uma Proshad*, 24 W. R Cr. 16.

In the case of *Gobind Chunder Mootra* v *Abdool Sayad*, I L R. 6 Cal. 835 (S. C.) 8 C. L. R. 217, the proceeding recorded by a Deputy Magistrate did not set forth in express language that he was satisfied that a dispute likely to create a breach of the peace existed in respect of the land in question between A on the one hand and B and C on the other; nor did it set forth the grounds upon which he was satisfied that such a dispute existed. It was held, that the proceeding was defective. In the proceeding it appeared that the Magistrate referred to a police report, but although it was held that the report might be taken to be incorporated by reference, it was not sufficient to justify the order. See the remarks of FIELD, J, in that case.

In a subsequent case, however, where the Magistrate recorded the following words—"whereas from the police report a breach of the peace is probable"—the High Court, although it considered the record of the grounds for the proceeding was unsatisfactory, yet, inasmuch as the police report, which was held to be incorporated, showed grounds for apprehending a breach of the peace, held that the final order declaring one party in possession was not defective.—*In re Kali Kristo Thakur*, I L R 7 Cal 46 (S. C.) 8 C. L. R. 245. See *Golucb Chandra Pal* v. *Kali Charan De*, I. L. R. 13 Cal. 375.

A Magistrate cannot proceed under this section in a case of a dispute arising out of a right of succession to a *mutth* and its appurtenances, but should apply to the Judge, under the provisions of Act XIX of 1841, to appoint a curator or make some order with regard to the property till the right of succession is determined.—*Reg.* v. *Sreeputt Giri Gossain*, 2 B. L. R. Ap. Cr 27 (S. C.) 11 W R Cr. 23.

Where the rights of parties have been already determined in a civil suit—*Rai Mohun Roy* v. *Wise*, 16 W. R. Cr 24, or even in registration proceedings—*Gobind Chundra Moitra* v. *Abdoul Sayat*, I. L R. 6 Cal 835; (S. C.) 8 C L R 217, if a breach of the peace is still imminent, the Magistrate should bind over the parties to keep the peace.

Report or other Information.—Under this section, as under the Explanation to s. 530 of Act X of 1872, the Magistrate may satisfy himself from a "police report or other information," but under the latter section it was held that the written report of an ameen, who had been deputed to hold a local inquiry, was not sufficient by itself to justify proceedings under the section—*Reg* v. *Soumber Ahir*, 20 W. R Cr. 57. Where, however, a Magistrate based his proceedings on the report of the Police, which did not show that there was any collection of men on the part of the opposite party, the proceedings were quashed.—*Puddomonee Dossee* v. *Jugodumba Dossee*, 25 W. R. Cr. 2.

In deciding a dispute as to a right of water, as distinguished from a right of fishery, the Magistrate must follow the procedure required by this Chapter. See *Reg.* v. *Ramnath*, 7 W. R Cr. 45.

When a Magistrate has taken any evidence, he is not justified in refusing to proceed with the case, because the parties neglect to file written statements on the day fixed for filing the statement. —*In re Goluck Chunder Mytee*, 11 W. R. Cr. 9.

The Magistrate should be careful not to interfere in cases which are of a purely civil nature.—*Mad. H. C. Pro., 4th January and 15th May* 1809, *Weir*, p. 26.

Possession.—As to what is actual possession, there was some conflict of authority under the former Code.

In the case of *Harak Narain Singh* v. *Luchmi Buz Roy*, 5 C. L. R. 287, it was held, that s. 530 of Act X of 1872 contemplated disputes between owners as well as occupiers JACKSON, J., said — "It seems to me clear that when a zemindar has let his lands or portion of them in farm, he, his farmers, and the occupying ryots are all in their degree concerned in any dispute as to possession which may arise, and that they may and ought to be respectively maintained in possession of the interests which they severally enjoy."—*Sutherland* v. *Crowdy*, 18 W. R. Cr. 11. "There may be cases," said COUCH, C. J., "in which a person would properly be said to be in possession, although there was no bodily possession by him. There is the case of a servant being in possession, and it may be said that when the servant is in possession, it is the possession of the master. So also if an occupier is paying rent, that is the possession of the landlord to whom he pays the rent. For some purposes the occupier has a possession, he has a possession which would enable him to bring a suit against a person who wrongfully disturbed him in his occupation; but still his possession is the possession of him by whose permission, either given by a lease or any other mode of letting, he holds the land and to whom he pays the rent." See *In re Jithahan* v. *Banarup Dhobi*, 6 C. L. R 193, where it was held that it was improper to make an order against one who was acting merely as the servant of another who claimed to be in possession, unless that other person were made a party to the proceedings. In a recent case it was decided that, in a dispute between two rival zemindars, constructive possession through intermediate holders, tuccadars, to whom the ryots paid their rents, was not such possession as could be dealt with under s. 530 of Act X of 1872.—*Emp.* v. *Tharoor Dyal Sing*, I. L. R. 3 Cal. 320 There AINSLIE, J., said —"No doubt it has been held that questions between zemindars as to the right of collecting rent directly from the ryots may be considered by Magistrates, and that this right of so collecting rent is in fact possession within the meaning of s 530, but that does not apply where there is an intermediate holder who admittedly receives rents from the ryots" (p. 321). See, however, the remarks made by MACDONELL, J. in *Harak Narain Singh* v. *Luchmi Buz Roy*, 5 C. L. R. 287, p. 290. See also the case of *Nobin Chunder Coondoo* v. *Jogendro Nath Bhuttacharjee*, 25 W R. Cr. 18, where it was held that a Magistrate had power to determine questions of contested possession between parties who were not in immediate possession of the land in dispute, but claimed to collect rent from tenants who actually occupied it. See also *Mad. H. C. Pro.*, 13*th July* 1869, *Weir*, p. 26, where it was laid down that constructive possession through tenants was not actual possession for the purposes of the section.

Again, it has been held, that the possession in regard to which the Magistrate's jurisdiction should be exercised must be of a real and tangible character When a party claims under a document or agreement, the right of doing certain things over a large extent of territory, the performance of acts under such alleged right in one portion of the ground over which the right extends, although it may be good and sufficient for the purpose of keeping alive that right so as to be an answer to the plea of limitation raised in a civil suit, is not of itself a sufficient possession on which a Magistrate's order under this section may be based for the purpose of forbidding in a distant locality acts not necessarily in conflict with such possession, though at variance with the right.—*Bejoy Nath Chatterjee* v. *The Bengal Coal Co.* 23 W. R. Cr 45

The possession given by an ameen in a *buttwara* is simply one of ownership and not of occupancy, and cannot, therefore, in proceedings under this section, be held to oust tenants occupying land previous to such delivery of possession.—*Mackenzie* v. *Shere Bahdoor Sahi*, I. L R 4 Cal 378. See *In re Juggodeshary*, 3 C. L R 94.

When there are sufficient grounds for apprehending a dispute in regard to lands or crops other than a dispute as to possession, the procedure prescribed for security to keep the peace in Chap XI may be followed. See *In re Gobind Chunder Moitra*, I. L. R 6 Cal. 835 (S. C.) 8 C L. R 217

Notice.—The mere service of a notice upon a mofussil naib, who takes no steps whatever to consult his employer, or act under his directions, is not such a notice as is contemplated by this section. —*Ramruttunnee Dossee* v *Goorroo Duss Roy*, 17 W R. Cr. 9

The only parties entitled to notice are those concerned in the dispute —*Gobind Chunder Ghose* v. *Anunto Chuntra Sircar*, 18 W. R. Cr. 5 (S. C.) 9 B L. R. Appx. 39 But there is nothing in the law which enforces the serving of notice upon all the co sharers in an estate which may, in some

shape or other, form the subject of litigation under this section —*Ibid* The Court held there, that it was not necessary to give notice to co proprietors not concerned in the dispute No order should be made against one who is acting as the servant of another person who claims to have possession of the land, unless that other person is made a party to the proceedings and *a fortiori*, it is improper to decide the matter in the absence both of the master and servant.—*In re Jiba han* v *Banirup Dhobi* 6 C L R 103

The notice must be a specific notice to the individuals interested in the dispute in consequence of which the proceedings have arisen and not a general citation to the public —*In re Rajah Ku nund Narain Bhoop* I L R 4 Cal 650 (8 C) 3 C L R 551 *In re Nobokishore Chuckerbutty*, 7 C L R 291 See *Golluck Chundra Pal* v *Kali Charan De*, I L R 13 Cal 175.

Intervenors There is no provision in the Code by which an intervenor can come in and claim possession of the property which is already the subject of proceedings under this section —*In re Rajah Kunund Narain Bhoop* I L R 4 Cal 650 (8 C) 3 C L R 551 But a Magistrate who has decided the question of possession is justified in preventing another person from entering upon the land —*Queen* v *Saadat Khan*, 3 W R, Cr 19

Factum of Possession —Under the former Act, the possession regarding which parties were required to give proof relating to a dispute as to land in respect of which a breach of the peace was apprehended it was held was possession at the time when the proceedings were instituted by the Magistrate, and not possession at the time the Magistrate came to his decision —*In re Pir thiram Chowdhry Rai Bahadoor* 20 W R Cr 51 *Rakhal Dass Singh* v *Rajah Sheo Persad Singh* 24 W R Cr 73 And this section seems by the use of the word "then" in the last line of the second paragraph to point specifically to the time when the Magistrate comes to a decision in the matter as the time with reference to which the fact of possession must be determined The matter is now, however concluded by authority, for in the case of *Ambler* v *Pushong* I L R 11 Cal 365 TOTTENHAM and GHOSE JJ held, that under this section, the Magistrate has to find which of the parties is in possession of the subject matter of the dispute at the time when he is inquiring into the matter, which time in contemplation of the law is practically identical with the time of the institution of the proceedings and not at any time previous thereto and he has no concern as to how the party in actual possession obtained possession, but has only to pass an order retaining him in possession The section it was said did not contemplate any change of possession pending the proceedings That case was referred to and apparently followed in the case of *Krishna Dhone Dutt* v *Trailokhia Nath Biswas* I L R 12 Cal 539 There a petition was on the 17th August, presented to the Magistrate alleging that a breach of the peace was imminent in respect of a certain area of 105 bighas forming a part of a large *julkur* called Narainpur Julkur, which was admittedly in the possession of certain persons who held under the petitioners In that petition it was alleged that the respondents had excavated a khal or canal leading to the *julkur*, with the object of drawing off and catching the fish of the *julkur* On the 23rd August the embankment was cut by the respondents so as to effect a junction between the khal and the *julkur*, and on the 24th August the Magistrate made an order in writing under s 145 of the Code of Criminal Procedure calling upon the parties concerned to put in written statements of their respective claims as regards possession of the 105 bighas which formed the subject of dispute On the 17th November the Joint Magistrate disposed of the matter in this way He held that as regards the 105 bighas, no one was in possession on the 24th August the date on which the Magistrate's order was made and he accordingly attached so much of the *julkur* but he found that the respondents having cut the embankment on the 23rd were in possession of that cutting on the 24th and he therefore, ordered them to be retained in possession if that cutting till ousted by a decree of a Civil Court It was held by the High Court that the inquiry in such cases should be directed to the question as to which party was in possession of the subject of dispute before any proceedings with Court had been taken in the matter The judgment in the case is less precise than that in the case of *Ambler* v *Pushong* which was followed in the case of *Chunder Koomar Poddar* v *Chundra Kanta Ghose*, I L R 12 Cal 521 but it was not apparently intended to lay down any different tune with reference to which the inquiry as to possession should be See *In re Prithuram Chowdhry* 20 W R Cr 5 and a Full Bench Ruling of the Madras High Court *Weir*, 2nd Edn, p 437 The case of *In re Mohesh Chunder Khan*, I L R 4 Cal 417 is hardly reconcilable with these cases

Where the property in dispute was forest land the right to possession of which was exercised by cutting timber from time to time the Magistrate found that the men of the 1st party had been driven away by the men of the 2nd party and had been unable to enter the forest and remove timber alleged to have been cut by them and that this happened before the time of the initial proceedings and continued up to the date of hearing and he came to the conclusion that the possession of the second party who had been able to remove the timber cut had been established The High Court held that having regard to the nature of the dispute these facts did not constitute legal possession of the 2nd party at the time the proceedings were instituted It pointed out that having regard to the mode in which possession might be exercised over property such as that in dispute it was necessary in order to find which party was in possession when the proceedings were instituted, to inquire which party was in undisturbed possession by felling timber and removing the same without objection on the occasion immediately preceding the occasion on which the dispute arose and that whoever should be found to have been in possession on that occasion should be presumed to have been in possession when the proceedings commenced —*Jagat Kusore* v *Ashanullah*, I L R 16 Cal 281

The decisions of the Bombay and Allahabad High Courts seem to be in accord with the recent decisions in Calcutta —*In re Huchapa* I L R 15 Bom 152 *In re Jai Lal* I L R 13 All 362

A Magistrate's finding as to the point of actual possession under this section is conclusive in a civil suit —*Lilu bin Raghushet* v *Annaji Parashram* I L R 5 Bom 387

The Magistrate should inquire into the fact of possession only and decide accordingly. Therefore, where a Magistrate awarded absolute possession to a claimant who admitted that the defendant was in possession, and who only claimed a right of way over the land, his order was quashed.—*Queen* v. *Sayar Mahomed*, 1 W. R. Cr. 25. See *In re Juggodishary*, 3 C. L. R. 94.

Where each of two parties claimed the same share of certain property as a whole estate, neither of them alleging that the other was joint with him in any way, and the Magistrate, without reference to the right of possession, went into the question of who was in possession, and maintained the possession of the party found in possession, the High Court declined to interfere.—*Bujnath Sahoo* v. *Rugoonath Pershad*, 25 W. R. Cr. 16.

Where a decree has been passed by a Civil Court, determining the rights of the parties to a suit to disputed land, it is a Magistrate's duty to uphold that decree, and he cannot, as between such parties, proceed under this section to decide afresh the question of possession.—*In re Bholanath Ghose*, 7 C. L. R. 516; *Rai Mohun Roy* v. *Wise*, 16 W. R. Cr. 24; *Ramgunga Coal Association* v. *Hem Lall Chatwal*, 24 W. R. Cr. 17. So in the case of *Shama Soondery Debia* v. *Jardine Skinner & Co.*, 6 W. R. Cr. 10, it was held, that a Magistrate ought not to interfere under this section with the execution of a decree of a Civil Court. If called upon to interfere at all, where a breach of the peace is apprehended, he should maintain in possession the person who has been actually put in possession by the decree of the Civil Court, for he is bound to maintain the party in possession who has obtained a decree from a Civil Court, and has no power to institute proceedings regarding the land covered by it.—*Rai Mohun Roy* v. *Wise*, 16 W. R. Cr. 24.

It would seem that in the absence of any other evidence of possession a Magistrate would be justified in finding possession to be with a person to whom symbolical possession has been shown to have been given in execution of a decree, although slight evidence would be sufficient to rebut such evidence of possession.—*Raja Babu* v. *Muddun Mohun Lall*, I. L. R. 14 Cal. 169. In *In re Chutraput Singh*, 5 C. L. R. 200, symbolical possession having been given of a mouzah, to which a haut appertained, which was sold in execution of a decree, the judgment-debtor refused to give up actual possession of the haut, maintaining that it was debutter property, of which he was the shebait. A breach of the peace being imminent, proceedings were taken under s. 530 of Act X of 1872, and the Magistrate, finding that the judgment-debtor was in actual possession of the haut, made an order maintaining him in such possession. The High Court held, that the Magistrate had no power to make the order, but was bound to see that the possession as given by the Civil Court was maintained, leaving it to the debtor to substantiate his claim in a Civil Court.

In the case of *Srikh Mungto* v. *Doorga Narain Nag*, 25 W. R. Cr. 47, it was said, that although symbolical possession is not entitled to weight as against a party proved to be in possession, yet, in the absence of evidence, it is in itself deserving to be taken into consideration.

When the rights of the parties have been determined in a civil suit, there is no longer a dispute within the meaning of s. 530, and it was held, that the proper course for a Magistrate to pursue, if the defeated party did any act which might probably occasion a breach of the peace, was to take action under s. 491 (corresponding with s. 107 of the Code), and require from such party security to keep the peace.—*In re Gobind Chunder Moitra*, I. L. R. 6 Cal. 835: (S. C.) 8 C. L. R. 217, *per* FIELD, J. See *Rai Mohun Roy* v. *Wise*, 16 W. R. Cr. 24. In the former case, certain registration proceedings in which the question of possession had been decided, were pending, and proceedings were taken under this section. PONTIFEX, J., said:—"In my opinion the fact that these registration proceedings were pending at the time the application was made for interference under the Criminal Procedure Code should have made the Deputy Magistrate extremely careful not to make any order as to possession under s. 530 (145), unless he was quite satisfied that the *bona fide* dispute existed, and that a breach of the peace was imminent. . . . It would have been quite sufficient if he thought a breach of the peace was imminent to bind over the leading ryots on either side. . . . It was never intended that the provisions of s. 530 (145) should be used for the purpose of avoiding a decision so recently arrived at after a full trial." On the same point, FIELD, J., who referred to the case of *Rai Mohun Roy* v. *Wise*, 16 W. R. Cr. 24, remarked:—"When the rights of the parties have been determined, there is no longer a dispute within the meaning of the section; and the proper course for a Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to acquire from such person security to keep the peace."

In the case of *Roy Mohun Roy* v. *Wise*, 16 W. R. Cr. 24, it was decided that when a decree had been passed by a Civil Court regarding land in dispute, it was the duty of the Magistrate to maintain it, and that he had no power again to institute proceedings regarding such land under this section of the Criminal Procedure Code. In the case of *Nobin Chunder Koondoo* v. *Jogendranath Buttacharjee*, 25 W. R. Cr. 18, on the other hand, it was laid down, that the mere delivery over of land to a purchaser at an execution-sale by the Civil Court peon did not take away the power of a Magistrate to inquire into the question of possession; but in the case of *Chutraput Singh*, 5 C. L. R. 200, the Court refused to follow that case, which seems to be against the weight of authority.

In a recent case it was held, that a Criminal Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought, the procedure to be adopted in such cases, it was said, being that provided by Chap. XIX of the Civil Procedure Code (Act XIV of 1882).—*Prayag Singh* v. *Fuzool Hoossin*, 6 C. L. R. 206.

Evidence.—In determining the question of actual possession, it is necessary that evidence should be taken upon oath.—*Queen* v. *Kali Churn Shah*, 7 B. L. R. 322. A police report is not in itself evidence that a dispute likely to induce a breach of the peace exists (*In the matter of Bhairowvari Chowdhrani*, 7 B. L. R. 329), although it may be sufficient to justify the Magistrate taking action. The Magistrate must come to a judicial decision on the question, and for that purpose examine the witnesses tendered by the parties.—*Mussamut Anundee Koer* v. *Ranee Soonaet Koer*, 9 W. R. Cr. 64.

A Magistrate is empowered by s. 540, *infra*, to summon witnesses in cases under this section. See *Shama Sunker Mozoomdar* v. *Ranee Anundmoyee Dassya*, 18 W. R. Cr. 64.

An order for possession passed by a Magistrate on a perusal of evidence recorded by another Magistrate was held, under the former Code, to be illegal.—*Mad. H. C. Pro.*, 16*th November* 1875; *Weir*, p. 26. See *Gurachurn Sen* v. *Kali Nath Dass Biswas*, 23 W. R. Cr. 62. These cases turned upon the wording of the Explanation to s. 530, which has not been repeated in this Code. It would seem that, under s. 350, *infra*, an order might be passed under this section upon evidence recorded by another Magistrate. But a Magistrate must decide the fact of possession on evidence, and not according to the result of a local inquiry made under s. 148, unless the parties had consented to be bound thereby.—*In re Baikunt Kumar*, 3 C. L. R. 134.

Title.—In trying a case under this section a Magistrate may discuss the question of title if in his opinion it was material upon the question of possession, and the mere fact that he may have considered the question of title will not invalidate his decision on the point of possession, provided that there was evidence before him as to who was in possession.—*Raja Babu* v. *Muuldun Mohun Lal*, I. L. R. 14 Cal. 169. See *Reid* v. *Richardson*, I. L. R. 14 Cal., p. 363.

In a case of disputed possession, it was held, that the Magistrate was wrong in not recording a sufficient proceeding showing the grounds upon which he was satisfied that the dispute was one likely to lead to a breach of the peace, and that if the parties consented to waive that point by consenting to go into the whole question, the Magistrate was wrong in taking the title of one person as *prima facie* evidence of his possession, and throwing the *onus* on the other and precluding the other from proving his title.—*Amrithnath Jha* v. *Ahmed Reza*, 6 W. R. Cr. 61.

Where there has been substantial evidence of possession or a conflict of evidence on that question, the Magistrate is justified in looking to the evidence of title in combination with the evidence of possession. *In re Kali Kristo Thakur*, I. L. R. 7 Cal. 45: (S. C.) 8 C. L. R. 244. See *Goluck Chandra Pal* v. *Kali Churn De*, I. L. R. 13 Cal. 175.

Where two investigations were before a Magistrate, who, after deciding one of the cases, remarked in the other, that, because the lands adjoined, he had taken the evidence in the two cases together, and found it unnecessary to continue the inquiry further, it was held that the parties kept out of possession were entitled to a full inquiry.—*Watson* v. *Ranee Surnomoyee*, 8 W. R. Cr. 63. But in the case of *Azim Mollah* v. *Sutoo Poramanick*, 10 C. L. R. 523, where there was a dispute as to the possession of 109 plots, all covered by the same state of circumstances, proceedings under the section were instituted in respect of all the 109 plots, but the Magistrate, after taking evidence in respect of 12 only, made an order, directing one party to be kept in possession of all the plots. It was objected that the Magistrate ought not to have included the 109 plots in one proceeding, and further, that evidence should have been taken in respect of each plot. The High Court, however, declined to interfere, being of opinion that, under the circumstances, the Magistrate had exercised a wise discretion in acting as he did.

In another case in which one party (thirty-nine in number, claimed to be tenants of 708 bighas of land belonging to T, and the members of the other party (seventeen in number) claimed to hold the same land in separate parcels as their *maurasi* jote, the Magistrate tried the question of possession as between the two parties in one case, notwithstanding the protests of the *maurasi* claimants to this mode of procedure; and decided that possession was with the party of thir y-nine directing that they as a body should remain in possession until ousted by the order of the Civil Court. The High Court on revision held that the course pursued by the Magistrate was prejudicial to the case of the *maurasi* claimants, and that the form of the order was open to the objection that it would render it necessary for the parties out of possession to make all the parties declared to be in possession defendants in any civil suits brought to recover possession of the land.—*Kutuhut Singh* v. *Uma Singh*, I. L. R. 15 Cal. 31.

The grant of a certificate under Act XXVII of 1860 is not proof of possession, nor does it entitle the holder to be put into possession of any property of a deceased person.—*Mussamut Anurages Koonwar* v. *Ramruchya Dass*, 25 W. R. Cr. 16: *Queen* v. *Srespulit Giri Gossain*, 11 W. R. 23: (S. C.) 2 B. L. R. Ap. Cr. 27.

Orders as to Possession.—It was doubted whether an order under s. 530 of Act X of 1872 could be directed to others than the unsuccessful party to the proceedings under the section; or whether such an order could properly be directed to the public at large.—*In re Nobo Kishore Chuckerbutty*, 7 C. L. R. 291.

A Magistrate has no authority to restore to possession a person alleged to have been illegally dispossessed. All that he can do in a dispute likely to lead to a breach of the peace is to follow the course prescribed by this section, and after inquiry declare the party whom he finds in actual possession entitled to retain possession until ousted by due course of law, and forbid all disturbance of such possession in the meantime.—*Ramjeebun Doobey* v. *Luchmonee Dabea*, W. R. Cr. Sup. Vol. 5. See, however, s. 522, *infra*, which is as follows:—"Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that by such force any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same; no such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish by civil suit." See Specific Relief Act, I of 1877, s. 9.

In a dispute as to a right of way, the Magistrate should decide whether the complainant has been in use and occupation of the road, and, if so, for how long, and if he finds him to be in possession, should retain them in it, leaving the owner of the land to refer the question of right to the easement to the Civil Court. He should not decide against the complainant, because he may have another right of way leading to the same place.—*Queen* v. *Toylukonath Sircar*, 2 W. R. Cr. 64.

A Magistrate cannot order that a person be kept in possession until he has reaped the crop standing on the ground, and then order that he shall give it away to another.—*Bunwari Lall Misser* v. *Raja Radha Pershad Singh*, 1 C. L. R. 136.

So a Magistrate who has found one party to be in possession has no power to give the opposite party found not to be in possession permission to cultivate the disputed land pending the decision of a possessory action.—*Shib Churn Chuckerbutty v. Ishen Chunder Chuckerbutty*, 10 W. R. Cr. 27.

Any order under this section is of course binding only on the actual parties in the case before the Magistrate So that, in a dispute between A and B and his tenants, where A was by an order declared to be in possession, subsequent tenants of B could not be criminally punished for disobeying the order —*In the matter of Gopal Burnawar*, 3 B L. R. Ap. Cr. 13. See *In re Nobo Kishore Chuckerbutty*, 7 C L R 291.

Any order under this section ceases to have any effect when the party aggrieved by it obtains an order from the Civil Court declaring his rights as against such order.—*Rajcoomar Singh*, Petitioner, 2 C. L. R 62.

A suit by any person bound by an order under s. 145 to recover possession of the property covered by the order must, under Art. 47 of the Limitation Act, XV of 1877, be brought within three years from the date of the final order in the case.—*Bolai Chand Ghosal* v *Samiruddin*, I. L. R. 10 Cal. 646.

On the death of one of the persons concerned in proceedings under this section, the Magistrate ought to postpone the proceedings and make his representative a party. Where, however, a party died just before the proceedings terminated in favour of him and another person, it was held that, inasmuch as the death had prejudiced no one, the order made was not bad.—*In re Sreemutty Ranee Anundomoyee Dabee* v *Luchman Pershad Gogo*, 2 C. L. R. 264.

A Magistrate, who finds an order of his predecessor with regard to the possession of certain land has not been complied with, should maintain the possession which he finds, even if it is inconsistent with his predecessor's order, and should not take any steps in the matter unless some one actually in possession and guaranteed possession by the order comes to complain to him that his possession is threatened, or that he has been forcibly turned out, and asks in pursuance of the order to be maintained in possession —*Queen* v. *Protab Chandra Barooah*, 21 W. R. Cr. 2.

Costs.—See the provisions of s. 148.

Revision by High Court.—Ordinarily where a Magistrate has decided on the evidence in favour of one party as being in possession of the disputed land, the High Court will not go into the evidence.—*Bharut Chunder Bose* v *Dwarkanath Chowdhry*, 15 W. R. Cr. 86; but in some cases, as where an improper use is attempted to be made of s 145, the Court will, as in the case of *Reid* v. *Richardson*, I. L. R. 14 Cal. 361, review the whole of the evidence with a view to put itself in possession of all the facts.

Proceedings under this section are judicial proceedings; see s. 4 (*d*), *supra* *Reg.* v. *Buloram*, 3 Wym. Cr. Rul. 37.

But an order by a Magistrate, under s. 518 of Act X of 1872 (s. 144 of this Code) upon information, and without any formal inquiry or taking of evidence, prohibiting a person from re opening a haut, was held not to be a 'judicial proceeding,' and therefore could not be dealt with under s. 297 of Act X of 1872.—*Bholanath Bose* v. *Komuru Idin*, 20 W. R Cr. 53; *Arzanoollah* v *Nazir Mullick*, 21 W. R Cr. 22.

For form of Magistrate's order declaring a party entitled to possession of land, &c., in dispute, see Sched. V, No. 22.

Power to attach subject of dispute

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

This section corresponds with s. 531 of Act X of 1872.

As to procedure, see note to preceding section.

Before passing an order under this section, a full inquiry should be held, the pre requisite of the order being that the Magistrate is unable to ascertain the fact of possession.—*Mad. H. C. Pro.*, 29 *Nov.* 1870. In the case of *In re Ram Soondaree Dabee*, 1 C. L. R. 86, the High Court at Calcutta, in dealing with a case under s. 531 of Act X of 1872, also held, that it was only when, after recording a proceeding under s. 530, and taking evidence, a Magistrate decided that neither party was in possession, or was unable to satisfy himself as to which party was in possession, that he could under s. 531 attach land in dispute. See *In re Raja Leelanund Singh Bahadoor*, 1 C. L. R. 273 *In re Mukhoda Dossee*, 18 W. R Cr. 4.

Where it appeared on a review of the whole evidence that the Magistrate should have passed an order under this section and not under s. 145 the High Court set aside the order made and passed the proper order —*Reid* v. *Richardson*, I L R 10 Cal. 361.

The power of attaching land under this section, it has been held, extends to disputes as to the possession of land of which rival zemindars are in possession by their ryots.—*In re Musuyk*, 15 W R. Cr. 1. But in the case of *Ramlyal* v *Chintamonee*, W. R. Sup. Vol. Cr. 28, it was said, that where there is a dispute as to the actual possession of land, not between two co proprietors, but between rival ryots, the Magistrate ought to settle the dispute, and not attach the land.

A Magistrate it has been held, may leave land attached under this section– *In re Greesh Chunder Doss*, 17 W. R. Cr. 38.

Where a Magistrate being doubtful as to which of two persons was the rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on the parties coming to an agreement, but subsequently re attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended,—it was held, that the Magistrate was only competent to order a fresh attachment after taking the preliminary steps under s. 530 of Act X of 1872 (s. 145 of this Code), if on completion of the inquiry he found himself in the position described in s. 531, and that if there was any new dispute, he ought to have proceeded *de novo*, but that the best course to pursue would be to exercise his powers under Chap. XXXVII (Chap. VIII of this Code.)—*Queen* v. *Kaly Kishore Roy*, 25 W. R. Cr. 68.

A Deputy Magistrate, after issuing notices under s. 530 of Act X of 1872 to two parties, found himself unable to determine who was in possession, and attached the property. Upon this a third party represented that he as landlord had taken possession of the land on the death of the person to whom it had been leased. The Deputy Magistrate, however, refused to remove the attachment, holding that the landlord's possession was without colour of law. The High Court held it was the duty of the Magistrate under the circumstances to have withdrawn the attachment, if he found that the third party was actually in possession.—*In re Joykissen Mookerjee*, 24 W. R. Cr. 1.

A Sessions Judge has no power to interfere with the order of a Magistrate attaching disputed land under this section.—*Hurronath Chowdhry* v. *Rajender Chunder Roy*, 15 W. R. Cr. 40.

A dispute between a zemindar and his lessee as to the right to receive rent is not within the meaning of the section.—*Mad. H. C. Pro.*, 11*th February* 1873; *Weir*, p. 27.

Revision.—As to the circumstances and grounds upon which the Court will review the evidence in cases under this Chapter, see *Reid* v. *Richardson*, I. L. R. 16 Cal. 361.

As to costs, see s. 148, *infra*.

For form of warrant of attachment in the case of a dispute as to the possession of land, see Sched. V, No. 23.

Disputes concerning easements, &c.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing as the case may be:

Provided, that no order shall be passed under this section, permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

Tangible Immoveable Property.—See note to s. 145.

The Civil Court is the proper tribunal to settle disputes relating to land, and though the Magistrate has a discretion as to whether he will inquire into a dispute, he should only do so to prevent a breach of the peace.—*In re Russool Nushyo*, 11 W. R. Cr. 3. This section is not intended to provide a substitute for a civil suit to declare the rights of the parties.—*In re Moonshee Hurukh Lall*, 6 W. R. Cr. 74; but see *In re Bhoiro Mundul*, 14 W. R. Cr. 28.

To enable a Magistrate to interfere in any matter under the section, there must be some substantial dispute in some way necessitating the interference of the criminal authorities.—*Maharajah of Burdwan* v. *The Chairman of Darjeeling Municipality*, I. L. R. 5 Cal. 194: (S. C.) 4 C. L. R. 324. The section only enables the Magistrate to prevent arbitrary interruption by any person of rights actually enjoyed by the public, a person or class of persons; it does not enable him to make a purely declaratory order.—*Ibid.* In an early case, decided upon the corresponding section of the Code of 1861, it was decided, that there was nothing in the section which made it imperative that there should be an apprehended breach of the peace before the authorities could interfere to decide a right of way.—*Queen* v. *Toytuckonath Sircar*, 2 W. R. Cr. 64.

The burden of proof is upon the person alleging the right to restrain another from exercising ordinary proprietary rights over his own land, such a right being of the nature of an easement different from the ordinary rights of owners of land.—*In re Hari Mohun Thakoor* v. *Kissen Sundari*, I. L. R. 11 Cal. 52.

"The object of this section (s. 532 of Act X of 1872)," said PHEAR, J., "is not to prevent the mischief or injury which may accrue by reason of the disturbance or assertion of the right to the persons who are disputing about it, but to stop the public manifestation of the dispute itself. The jurisdiction which is given to the Magistrate is intended for the purpose of preserving the public peace. It does not convert the Magistrate into a Court which is to determine rights between parties

or to consider and discuss any questions of proprietary damage done to individuals."—*Rostk Lall Nundi* v. *Kartik Shaut*, 22 W. R. Cr. 48. See *Abhoy Chundra Mookerjee* v. *Mohamed Sabir*, I. L. R. 10 Cal. 78: *In re Balkrishna*, I. L. R. 11 Bom. 584.

When it appears that the use of water is open to the public or to any person or class of persons, the Magistrate may, under this section, order that possession shall not be taken by any party to the exclusion of the public, or such persons, until the party claiming possession obtains a decree adjudging such exclusive possession to him.—*Moonshee Hurukh Lall, Petitioner*, 6 W. R. Cr. 74.

An obstruction of a drain into which the sewage of complainant's premises fell did not, it was held, come within the terms of the section. In such a case, a civil suit and injunction would be the proper remedy.—*In re Troylukhonath Bose*, 1 Wym. Cr. Rul. 52.

In the case of *Lindsay*, Petitioner, I. L. R. 4 Mad. 121, a complaint was made to a Magistrate that an obstruction had been raised and existed on land reserved by Government and dedicated as a public road. An *ex-parte* order purporting to be made under s. 532 of Act X of 1872 (this section) directing the party in possession not to retain possession until he should obtain the decision of a competent Civil Court adjudging him entitled to exclusive possession, with a further direction to remove the obstruction, was made, but the High Court held it to be bad in law. The section, it was said, authorizes the Magistrate to exercise the jurisdiction it confers only when the subject of dispute is open to the use of the public. The Legislature, in conferring on the magistracy power to intervene for the temporary settlement of disputed civil rights, is careful to direct the preservation of the *status quo* existing at the time proceedings are instituted. . . . . So much of the order as directed the removal of the obstruction was therefore *ultra vires*.—*Ibid, per Curiam*.

In an investigation as to the right of use of land, a Deputy Magistrate has no legal competency to order the destruction of a wall existing before the case came on, notwithstanding that a right of pathway may appear to have been infringed by the accused party.—*In re Sreemonto Doloolee* v. *Ram Chand Aduck*, 1 Wym. Cr. Rul. 50: (S.C.) 5 W. R. Cr. 57.

Where a dispute had arisen between the Mahomedan and Hindu inhabitants of a town as to the right of the latter to carry corpses along a certain public street to the burning ground, the Magistrate passed an order, purporting to be made under s. 532 of the Code of 1872, directing that the Hindus should carry corpses by the nearest route to the burning ground and not by the street, to the use of which for such purposes the Mahomedans objected. It was held the order was illegal. —*In re Narayana Turagan*, I. L. R. 7 Mad. 49.

Where a dispute likely to cause a breach of the peace was shewn to exist concerning the right to perform a religious ceremony in a mosque, the Madras High Court held that was a dispute concerning the right to do a thing in or upon tangible immoveable property and that an order might be made under this section.—*Muhammad Musaliar* v. *Kunji Chek*, I. L. R. 11 Mad. 323. An order under s. 147 forbidding certain persons from taking part in the worship and other religious ceremonies connected with certain temples was held to be bad, amongst other reasons because it contained no restriction as to time.—*In re Atmaram Narayan Parab*, I. L. R. 14 Bom. 25.

Procedure.—As to procedure, see note to s. 145, *supra*.

The jurisdiction given by this section to decide for a time the right to enjoyment of property should not be exercised except on clear and satisfactory proof. Where the only evidence is user, it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right, and permitted uninterruptedly for some considerable length of time.—*Mad. H. C. Pro., 14th January* 1869; *Weir*, p. 27.

A right of way or a right to the flow of water across the land of another is a right of use of land and within the meaning of the section.—*Mad. H. C. Pro., 18th and 21st February* 1867, and *1st June* 1868; *Weir*, p. 27.

In some cases which might come under this section proceedings may be taken under s. 133, *ante*. Where such proceedings are taken, the Magistrate may issue an order *ex-parte*, or on mere report, it being competent to the person to whom the order is directed to appear and show cause against it, and demand the submission of the question of right to the decision of a jury. Under this section, however, the inquiry precedes the issue of the order, and the inquiry presumes not that one party only, but that both parties to the dispute, will be afforded the opportunity of appearing and adducing evidence on all material matters. If no such inquiry is held, an order under this section cannot be supported.—*In re Lindsay*, I. L. R. 4 Mad. 121.

For form of Magistrate's order, prohibiting the doing of anything on land or water, see Sched. V, No. 24.

As to costs, see next section.

Local inquiry.

148. Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Subdivisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instruction consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

When any costs have been incurred by any party to a proceeding under this Chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

Order as to costs.

As to levy of fines, see ss. 383 388, *infra*.

"The local inquiry referred to in the section should be restricted solely to some question relating to the features of the property about which the dispute has arisen; and should not be directed to any matter which can be proved before the Magistrate by oral evidence."—*Per* PRINSEP, J., *In re Baikunt Kumar*, 3 C. L. R. 134.

When a local inquiry under this section is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it, and to have an opportunity of rebutting the deputed Magistrate's report if he thinks necessary.—*Mir Dhunoo* v. *Brown*, 21 W. R. Cr. 25.

The local inquiry should be a personal inquiry before the person deputed.—*Mad H. C. Pro.*, 13*th November* 1868; *Weir*, p. 26. And the duty of making it, if deputed, should be deputed to a Magistrate, and not to a *canungoe*.—*In re Uma Churn Santra*, 7 C. L. R. 352.

Proceedings under this Chapter, it was held by PRINSEP and GRANT, JJ., should, on all points of procedure, be regarded as summons cases, and although it is discretionary with a Magistrate to issue a summons on a witness in such a case, yet, when any one of the parties applies at a proper time for process to secure the attendance of his witnesses, the Magistrate should not arbitrarily refuse his assistance, and when such refusal is made, it is incumbent on the Magistrate to record his reasons for such refusal.—*In re Harendro Narain Singh Chowdhry*, I. L. R. 11 Cal. 762.

Section 355 deals with the manner of taking evidence in summons cases, while s. 356 provides a different method in case of proceedings under this Chapter.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

149. Every Police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence.

Police to prevent cognizable offences.

As to what is a 'cognizable offence,' see s. 4 (*q*), *ante*.

By s. 151, *infra*, a Police-officer may arrest without warrant if it appears to him that the commission of an offence cannot otherwise be prevented. Should he do so, his subsequent procedure must be regulated by s. 60 (*supra*,) which directs that he shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station. An officer in charge of a Police-station can proceed to inquire into such offences when they have been committed within the limits of such station. He should, however, when a complaint is made to him, reduce such into writing, and enter the substance thereof in the diary, whether the occurrence, which is the subject of the complaint or information, took place within his jurisdiction or not.—*Bengal Police Manual, 2nd Edition*, 374.

For other duties of Police-officers, see ss. 23, 25, 30 and 31 of Act V of 1861 in Bengal.

150. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

The duties under this section should be performed without reference to local jurisdiction.

151. A Police-officer, knowing of a design to commit any cognizable offence, may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appear to such officer that the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

The Police-officer must report all cases of arrests without warrant to the District Magistrate, or, if he so directs, to the Subdivisional Magistrate.—s. 62, *supra*.

No person arrested by a Police-officer should be discharged except on his own bond or on bail, or under the special order of the Magistrate.—*S.* 63, *supra.*

Where an arrest is made under this section without warrant, it is the duty of the Police-officer, without unnecessary delay, and, subject to the provisions as to bail, to take or send the person arrested before a Magistrate having jurisdiction, or before the officer in charge of a Police station.—*S.* 60, *supra.*

Prevention of injury to public property.

152. A Police-officer may, of his own authority, interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public landmark, or buoy or other mark used for navigation.

The offences referred to are dealt with by ss. 430—434 of the Indian Penal Code. The only one for which a Police officer cannot arrest without warrant is that of injuring a public landmark (s. 434 of the Indian Penal Code). Accordingly a Police-officer cannot, in case of such an offence, proceed under s. 151, as it is now cognizable.

If the injury be committed, and amount to an offence for which a Police officer is not authorized to arrest without warrant, he should take the name and address of the offender, with a view to instituting a prosecution against him. (See s. 24, Act V of 1861.) Under any circumstances, if the injury, whether it amount to an offence or not, is committed in direct opposition to a Police officer actively engaged in endeavouring to prevent its commission, the offender may be arrested, under s. 54, cl. v. *supra*, for obstructing a Police-officer while in the execution of his duty. See *Bengal Police Manual*, 2nd Edition, p. 375.

Where an arrest is made under this section without warrant, it is the duty of the Police-officer without unnecessary delay, and subject to the provisions of this Code as to bail, to take or send the person arrested before a Magistrate having jurisdiction or before the officer in charge of a Police-station.—*S.* 60, *supra.*

Under s. 61, a person arrested without warrant by a Police-officer is not to be detained for a longer period than, under all the circumstances of the case, is reasonable; and, in the absence of a special order of a Magistrate under s. 167, *post*, this period is not to exceed twenty four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Inspection of weights and measures.

153. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

The Calcutta Police have similar powers under Act IV of 1866: the Bombay Police, under Act XLVIII (Bom.), 1860. Act IV (Bom.), 1882. and the Madras Police, under Act VIII (Mad.) of 1867.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.*

CHAPTER XIV.

Information in cognizable cases.

154 Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing

* In the absence of any specific provision to the contrary, nothing in this Code shall apply to the Commissioners of Police in the Towns of Calcutta, Madras, and Bombay, or the Police in the Towns of Calcutta and Bombay.—*S.* 1 (*a*), *supra.* Apparently the only section in this Chapter which applies to investigations by the Police of Calcutta and Bombay is s 155.—*Emp.* v. *Nilmadhub Mutter*, I. L. R. 15 Cal. 595. As to conferment of magisterial powers upon Police-officers in Salween and Arakan Hill Tracts, see Act XI of 1883, s. 101.

as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

See s. 112 of Act X of 1872, which provided that a complaint to a Police-officer should be signed, sealed or marked. Doubtless, under this section, where the information is given by a person unable to write, his mark will be taken as a sufficient signature.

Section 180 of the Penal Code provides: "Whoever refuses to sign any statement made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to Rs. 500, or with both."

'Information' is not defined by this Act. It does not come within the definition of complaint in s. 4 (*a*), *supra*.

Where a complaint made to the Police is found to be false, the complainant may be prosecuted under s. 211 of the Penal Code.—*Emp.* v. *Salik Roy*, 8 C. L. R. 255. See *In re Sakina Bibee*, 8 C. L. R., 387: *Government* v. *Karimdad*, I. L. R. 6 Cal. 426: (S. C) 7 C. L. R. 467: *Syad Nissar Hossain* v. *Ram Golam Singh*, 25 W. R. Cr. 10: *In re Chukradar Potti*, 8 C. L. R. 289. See notes to s. 195, *infra*.

Giving false information to a Police-officer with intent to cause a public servant to use his lawful power to the injury or annoyance of any person is an offence punishable under s. 182 of the Penal Code. If the Police-officer makes an investigation, he is entitled to examine the person giving the information, and the latter is now bound to answer truly (s. 161, *infra*); and if he knowingly answers falsely, he commits an offence under s. 193 of the Indian Penal Code.—*Emp.* v. *Parshram Ray Sing*, I. L. R. 8 Bom. 216.

The complaint or information reduced into writing under this section forms part of the First Information Report.

The book in which the substance of the informations must be entered under this section appears to be the Police-diary kept under s. 44 of the Police Act, V of 1861, and any Criminal Court may send for the Police-diaries of a case under inquiry or trial in such Court, and may use such diaries to aid in such inquiry or trial.—*Section* 172, *infra*. But a prisoner has no right to insist that a Police-diary, if not in Court, shall be sent for, or, if it be in Court, that it be referred to for the purpose of refreshing the memory of a Police-officer under examination.—*In re Kali Churn Chunari*, 10 C. L. R. 51: (S. C.) I. L. R. 8 Cal. 154: see *Reg.* v. *Uttamchand Kopur Chand*, 11 Bom. H. C. R. 129. Any Criminal Court, however, may send for the Police-diaries of a case under inquiry or trial, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.—*Section* 172, *infra*. This diary is purely for Police purposes, for the information of the superior officers of Police, and the future guidance of the officer in charge of the Police-station, and ordinarily it ought not to be sent to the Magistrate trying the case; but if, on the trial, the Magistrate requires the production of the diary, it must be produced. The Government cannot impose any limit upon the discretion of Magistrates in calling for evidence or in judging what is or is not evidence according to law. Although the diary kept by a Police-officer is not evidence *of the fact stated therein*, except against that officer, it may be evidence, of other facts. See *Bengal Police Manual*, 2nd Edition p. 376.

It has been held that statements of witnesses recorded by a Police-officer while making an investigation under s. 161 form no portion of the Police-diaries referred to in s. 172, and an accused person has a right to call for and inspect such statements and cross-examine the witnesses upon them.—*Bikao Khan* v. *Emp.*, I. L. R. 16 Cal. 610: *In re Muhamad Ali Hadji*, I. L. R. 16 Cal. 612, *note*; *In re Sheru Shah*, decided at Calcutta 29th March 1893 but not yet reported.

Presidency Towns.—This section does not apply to Police in Calcutta or Madras.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Information in non-cognizable cases.

155. When information is given to an officer in charge of a Police-station of the commission, within the limits of such station, of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information, and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

The case of *Foktu Shah*, 2 B. L. R. S. N., vii, in which GLOVER, J., dissented from the case of *Harruckchand Nowlaka* 8 W. R. Cr. 12, is superseded by this section.

A non-cognizable offence is defined in *s. 4 (q), supra.*

As to the use which the Court may make of Police-diaries, *see* s. 172, *infra*, and the note to the preceding section.

An information respecting any offence is not chargeable with a fee.—*Act VII of* 1870, *s. 19, cl. xvi.*

No Police-officer may, without the *express order of a Magistrate*, investigate an offence not cognizable by the Police.—*Smyth*, p. 83. The Magistrate under this section must, in addition to being a Magistrate of the first or second class, have power to try the case or commit it for trial.

'Investigation' includes all the proceedings under the Code for the collection of evidence conducted by the Police or by any person other than a Magistrate or Police-officer who is authorized by a Magistrate in that behalf.—*Section* (4) (*b*), *supra.*

The powers of an officer in charge of a Police-station are specified in the next section.

A third class Magistrate is not referred to by the section, and such a Magistrate, it has been held, has no power to direct the Police to hold an investigation as to the truth of a complaint.—*Mad. H. C. Pro.*, 22*nd May* 1874; *Weir*, p. 7. But if a Magistrate, not empowered by law in that behalf, erroneously but in good faith orders the Police under this section to investigate, his proceedings shall not be set aside on the ground of his not being empowered.—*S.* 529 (*b*), *post.*

In the case of *Kristo Lall Nag*, I. L. R. 10 Cal. 256, it was held, that statements of witnesses, or confessions taken at a Police investigation, are not, *as far as their subject-matter is concerned*, any more the property of the Police than the property of the prisoners, and that a pleader was not guilty of misconduct in making use of copies of such documents for the benefit of his client when delivered to him by the client, however improperly the client may have become possessed of them, provided the pleader was neither party nor privy to the obtaining of them. In that case the accused, a pleader, was charged with having used copies of documents improperly obtained from the clerks in the Police Office.

Presidency Towns.—This apparently is the only section of this Chapter that applies to investigations by the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595. It deals only with the powers of Police-officers. It confers no power or authority on Magistrates to direct a local investigation by the Police or to call for a Police report.—*In re Janki Dass*, I. L. R. 12 Bom. 161. Section 202 enables only the Chief Presidency Magistrate to direct a local investigation by the Police, except where a like authority has been specially conferred on a Presidency Magistrate of lower rank.

156. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

Investigation into cognizable cases.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

The effect of applying the provisions of Chap. XV relating to the place of inquiry or trial to Police investigations in cognizable cases, is to give the officer in charge of a Police-station power to investigate cases over which more than one Court has jurisdiction. Thus, murder by a thug may be investigated wherever the accused may be found.—*Section* 181, *infra.*

By s. 183, *infra*, an offence committed in the course of a journey or voyage may be inquired into and tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

The report which, under s. 114 of Act X of 1872, was required to be sent to "the Magistrate having jurisdiction," must now, under the next section, be sent to "a Magistrate empowered to take cognizance of such offence upon a Police report." The Magistrate so empowered would be a Presidency Magistrate, District Magistrate, or Subdivisional Magistrate or any other Magistrate specially empowered to take cognizance of any offence upon a Police report.—*Section* 191, *infra.*

Section 161, *post*, makes it obligatory on a person examined in the course of a Police investigation under this Chapter to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture) and such person, if he knowingly answers falsely, commits the offence of knowingly giving false evidence, in a stage of a judicial proceeding, under s. 193 of the Penal Code.—*Emp.* v. *Parshram Ray Sing*, I. L. R. 8 Bom. 216.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

157. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same

Procedure where cognizable offence suspected.

to a Magistrate empowered to take cognizance of such offence upon a Police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender :

Provided as follows :—

(*a*) when any information as to the commission of any such offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot :

Where local investigation dispensed with.

(*b*) if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Where Police-officer in charge sees no sufficient ground for investigation

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

The first clause of this section corresponds with para. 1 of s. 114 of Act X of 1872. Proviso (*a*) corresponds with s. 116, and proviso (*b*) with para. 1 of s. 117, of the same Act, omitting the words in the latter 'or that immediate arrest is not necessary,' there being no reason why a Police-officer should be debarred from investigating a case of a cognizable offence, because he does not at starting feel himself justified in arresting any person.

A complaint or information preferred to an officer in charge of Police-station, of the commission within his local jurisdiction of an offence cognizable by the Police, if there is reason to suspect that it has been committed, should be immediately reported to the Magistrate empowered to take cognizance of the offence. The object is clear. The Magistrate is primarily responsible for the condition of the district or division of the district in which he has local jurisdiction, and he cannot divest himself of that responsibility. He should not rest content with reading the report, but he should watch the various steps taken by the Police, and advise them in all cases when necessary ; and the Police should keep the Magistrate informed of their action. See *Smyth*, p. 83.

If, on any complaint or information being preferred, a Police-officer sees no sufficient ground for investigation, he shall report the substance of the complaint for the orders of the Magistrate having jurisdiction.—*Smyth*, p. 83.

By C. O. No. 7 of the Calcutta High Court, dated 20th July 1871, Magistrates were cautioned against the indiscriminate use of Police agency for the purpose of ascertaining matters as to which a Magistrate is bound to give his own opinion upon evidence given in his presence.

Where a Police-officer in charge of a Police-station finds there is no sufficient ground for entering on an investigation, and is therefore precluded by this section from entering upon an inquiry, no other Police-officer is competent to make such inquiry unless he is authorized or required to do so, by an order of the Magistrate.—*Cal. H. C. C. O., 20th July* 1871 ; 7 B. L. R., *Rules*, 15.

In Burma, reports of the nature referred to in this section must be submitted to the Magistrate having jurisdiction through the District Superintendent of Police ; or, if no such officer be resident at the station, through the Assistant Superintendent of Police ; or, if there be no Assistant Superintendent in the station, through the Inspector. If no District Superintendent, Assistant Superintendent or Inspector is resident at the station, the report must be submitted to the Magistrate having jurisdiction.—*Burma Gazette*, 1879, Part II, p. 189. See next section.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp. v. Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of Police as the Local Government, by general or special order, appoints in that behalf.

Report under section 157 how submitted.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

'Such superior officer,' that is, an officer superior to an officer in charge of a Police-station.

In Burma, the District Superintendent or other chief officer of Police in the district is the superior officer of Police through whom the report of the substance of a complaint or of any information is to be submitted for the order of the Magistrate having jurisdiction.—*Burma Gazette*, 1873, Part II, p. 7.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp. v. Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at, once proceed, or depute any Magistrate subordinate to to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

This section corresponds with s. 115 of Act X of 1872, with an alteration empowering the Magistrate deputed by a superior Magistrate in the alternative, to hold *an investigation* or preliminary inquiry.

As to what is an investigation, see s. 4 (*b*) *supra*.

If a Magistrate takes an active part in the arrest of persons charged with having committed an offence, he is bound to state to the accused, so far as he can what were the facts which he himself observed, and to which he himself can bear testimony; and the prisoner has a right to cross-examine the Magistrate, whose evidence should be recorded, and should form part of the record in the case. The proper course, however, for the Magistrate to take is to decline to try the case, and to ask that it should be undertaken by some other Magistrate.—*Hurro Chunder Paul, Petitioner*, 20 W. R. Cr. 76; see the remarks of PHEAR, J.

As to registers of preliminary inquiries in Madras, see *Weir*, p. 27.

160. Any Police-officer making an investigation under this Chapter may by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station, who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses

This section, which applies to any Police-officer making an investigation, embodies the first part of s. 178 of Act X of 1872, which, however, applied to an officer in charge of a Police-station, or other officer making an investigation.

In Madras, a Full Bench expressed an opinion that this section does not authorize a Police-officer to require the attendance of an accused person with a view to his answering the charge. The intention of the Legislature seemed to have been only to provide a facility for obtaining evidence, and not for procuring the attendance of the accused.—*Emp.* v. *Sammada Chetti*, I. L. R. 7 Mad. 274.

With regard to persons whose evidence is required by a police-officer making an inquiry, no power exists to arrest or detain them for a single moment. An officer in charge of a Police-station may, under this section, by an order in writing, require the attendance of persons whose evidence is necessary, and persons summoned are bound to obey the order; but in no case can the Police officer compel a witness by force to attend before him.—*Queen* v. *Bohary Sing*, 7 W. R. Cr. 3. Disobedience to an order to attend is punishable, however, under s. 174 of the Indian Penal Code.

The order requiring the attendance of a witness may be in a prescribed form and lithographed. —*Smyth*, p. 85; see s. 4 (*e*), *supra*. It is not a summons.

By s. 5 of Act V of 1861, the Inspector-General of Police has the full powers of a Magistrate throughout the general Police district, but must exercise those powers subject to such limitation as may, from time to time, be imposed by the Local Government. By s. 6, the Local Government may vest any Deputy Inspector-General, Assistant Inspector-General, District Superintendent, or Assistant District Superintendent of Police with all powers or any of the powers of a Magistrate within such limits as it may deem proper; but such officers respectively shall exercise the powers with which they shall be so vested, only so far as it may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension, and detention of offenders in order to their being brought before a Magistrate, and so far as may be necessary for the performance of the duties assigned to them by that Act.

As to summoning witnesses from another district under s. 6 of Act V of 1861, the following rule is in force in the Punjab:—In every case in which a District Superintendent may exercise the power, he must be able to affirm its necessity in terms of the section above quoted. This will not ordinarily be the case where there are persons in custody on a *primâ facie* charge, as they must be sent before the Magistrate within a reasonable period, which must not, in the absence of the special order of a Magistrate, exceed twenty-four hours. If the inquiry cannot be completed within that period, it would be more convenient for the Magistrate to summon the witnesses than the District Superintendent, and this would also be more in conformity with the spirit of the law.—*Smyth*, p. 86.

In Bengal the following information is published for the guidance of Police-officers: Causing attendance under this section does not amount to an arrest; and in no case can a Police-officer compel a witness by force to attend before him. A Police-officer may summon parties to a Police-station for the purpose of obtaining information from them; but if the voluntary action of such parties is in any way interfered with, such interference would constitute an arrest. Instances have occurred when suspected parties have been summoned to a Police-station for inquiry and have been detained all night. Unless they remained voluntarily, such detention constitutes "an arrest." Under the orders of Government, No. 6355, dated 13th November 1865, Police-officers, when causing

the attendance before them of Railway employés, must send immediate information to the head of the department under which such employés are serving. See *Bengal Police Manual*, 2nd Edn., p. 378.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Examination of witnesses by police.

161. Any Police-officer making an investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

This section embodies the latter part of s. 118, paras. 1 and 2 of s. 119 of Act X of 1872, inserting the word 'truly' in the last paragraph.

It was ruled by a Full Bench of the High Court at Calcutta, that ss. 118 and 119 of Act X of 1872 imposed no obligation upon a person examined by the Police under those sections to speak the truth.—*Emp.* v. *Kasim Khan*: *Emp.* v. *Mussamut Dabee*, I. L. R. 7 Cal. 121: (S.C.) 8 C. L. R. 300. The Full Bench overruled the case of *Queen* v. *Nimchand Mookerjee*, 20 W. R. 41, and their decision is also directly opposed to a previous decision in the case of *Juggernath Sahai*, 8 C. L. R. 236. Sections 118 and 119, it was said, were merely intended to oblige persons to give such information as they can to the Police in answer to the questions which might be put to them.—*Emp.* v. *Kasim Khan*, I. L. R. 7 Cal. 121; (S. C.) 8 C. L. R. 300. It will be observed that the decision of the Full Bench has been superseded by this section, which provides that a person examined under it shall be bound to answer truly all questions put to him. If he knowingly answers falsely, he commits the offence of giving false evidence, in a stage of a judicial proceeding, under s. 193 of the Indian Penal Code.—*Emp.* v. *Parshram Ray Sing*, I. L. R. 8 Bom. 216: *Nathu Sheikh* v. *Emp.*, I. L. R. 10 Cal. 405.

Where a person is charged with giving false evidence upon an alternative charge on statement having been made to a Police-officer and the other when he was examined as a witness there can be no conviction, unless it be clearly proved by the evidence that the statement made to the Police-officer was a statement made in answer to questions put by the accused by the investigating Police-officer and also that the Police-officer was in fact making, an investigation under Chapter XIV.—*Emp.* v. *Baikanta Bauri*, I. L. R. 16 Cal. 349.

It is not obligatory upon a Police-officer to reduce into writing any statements made to him during an investigation. Where statements so made are reduced by him into writing, oral evidence of such statements is still admissible under s. 91 of the Evidence Act.—*Reg.* v. *Uttamchand Kapurchand*, 11 Bom. H. C. R. 120. The Police are not to reduce to writing, or make witnesses sign statements, with a view to send in the papers as part of the record to be used as evidence.—*Smyth*, p. 85. They are not to record except for their own private information, and therefore not to form part of the record any statement or admission of guilt which may be made before them. If the Police persist in doing this, their charge sheets should be returned to them, and, if necessary, a report made to their superior authority.—*Smyth*, p. 85.

In the case of *Krishto Lall Nag*, I. L. R. 10 Cal. 256, it was held, that statements of witnesses or confessions, taken at a Police investigation, are not, *as far as their subject-matter is concerned*, any more the property of the Police than the property of the prisoners, and that a pleader was not guilty of misconduct in making use of copies of such documents for the benefit of his client when delivered to him by the client, however improperly the client may have become possessed of them, provided the pleader was neither party nor privy to the obtaining of them. In that case the accused, a pleader, was charged with having used copies of documents improperly obtained from the clerks in the Police Office.

In giving evidence, a Police-officer may refresh his memory by referring to documents in which he has reduced into writing, under this section, statements of persons examined by him during an investigation; but the documents themselves cannot be used as evidence (see s. 162), and a Judge should not read such documents to a jury in order to point out discrepancies between the evidence and previous statements of the witnesses.—*Roghuni Singh* v. *Emp.*, I. L. R. 9 Cal. 455: (S. C.) 11 C. L. R. 569. See *In re Sheikh Dabu*, 6 C. L. R. 47, and note to s. 154, *supra*.

Statements of witnesses recorded by a Police-officer while making an investigation under this section form no portion of the Police-diary referred to under s. 172, *post*, and an accused person in his trial has a right to call for and inspect such statements and cross-examine the witnesses thereon.—*Bikao Khan* v. *Emp.*, I. L. R. 16 Cal. 610.—*In re Mahomed Ali Hadji*, I. L. R. 16 Cal. 612, *note*; *In re Sheru Sha*, decided by the Calcutta High Court, 29th March 1893 (not yet reported.) The statements of witnesses examined under this section are not the proceedings of a Police-officer.—*In re Sheru Sha*, Calcutta, 28th March, 1893,—and are not privileged although included amongst other things which properly form portion of the special diary made under s. 172, *post*.—*Ibid*.

It is not illegal, though unnecessary, for the Police-officer taking statements under s. 161 to obtain the signature of persons present to authenticate them.—*Emp.* v. *Bhogwantia*, I. L. R. 15 All. 11. The statements need not be recorded in the form of alternate question and answer.—*Ibid*.

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Moreover, the statements are not evidence at any stage of a judicial investigation, and accordingly the sanction of the Police-officer who recorded them is not necessary under s. 195, *post*, to a prosecution for false statements made to him whether the charge be framed singly or in the alternative.—*Emp.* v. *Ismal*, I. L. R. 11 Bom. 659.

162. No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it, or *shall* [Act X of 1886, s. 6] be used as evidence against the accused.

Statements to Police not to be signed or admitted in evidence.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

See s. 119.

Oral evidence of the statements made and reduced into writing is not inadmissible under s. 91 of the Evidence Act.—*Reg.* v. *Uttamchand Kapurchand*, 11 Bom. H. C. R. 120. The writing itself cannot be treated as part of the record, or used as evidence, for or against the accused.—*Emp.* v. *Sitaram Vithal*, I. L. R. 11 Bom. 657 : *Lalji* v. *Emp.*, Punjab Rec., 1886, p. 26. See *Bahawala*, Punjab. Rec., 1886. p. 39,—but the Police-officer to whom the statements were made may use it for the purpose of refreshing his memory under s. 159 of the Evidence Act. Consequently, the person making the statements may be cross-examined about them, and with a view to impeach his credit, the Police-officer himself, or any other person in whose hearing the statements were made, can be examined on the point under s. 155 of the same Act.—*Ibid* : *Roghuni Singh* v. *Emp.*, I. L. R. 9 Cal. 455 : (S. C.) 11 C. L. R. 569 : *Emp.* v. *Sitaram Vithal*, I. L. R. 11 Bom. 657.

So, in *Reg.* v. *Uttamchand Kapurchand*, 11 Bom. H. C. R. 120, it was decided that, when a witness comes forward at a trial, and makes a statement contradicting his statement previously made to the Police, the accused, or his pleader, is entitled to cross-examine him with respect to his former statement, and that the witness may be contradicted by calling the Police-officer before whom he made the statement, and the Police-officer may refresh his memory from his diary. The Court, in the case of *Kalichurn Chunari*, 10 C. L. R. 51 : (S.C.) I. L. R. 8 Cal. 156, concurred in that decision, but held that the accused has no right to insist that a Police-diary, if not in Court, shall be sent for, or, if it be in Court, that it be referred to for the purpose of refreshing the memory of a Police-officer under examination.

Where it appeared that but for the principal witness for the defence having been discredited by means of proof of a previous inconsistent statement made by the witness before the investigating officer the accused would have been acquitted, it was held that this amounted to a using of such statement against the accused within the meaning of s. 162.—*Emp.* v. *Madho*, I. L. R. 15 All. 25. See *Kesar* v. *Emp.*, Punjab Rec., 1891, p. 12.

By s. 155 of the Evidence Act, the credit of a witness may be impeached by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted; and by s. 157, "in order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

A Police-officer, by whom a statement has been reduced to writing, may, while under examination, refresh his memory by referring to the writing made by him.—*Evidence Act, I of* 1872, s. 159. See *In re Sheikh Dabu*, 6 C. L. R. 47: *Emp.* v. *Setaram Vithal*, I. L. R. 11 Bom. 657.

Section 121 of Act X of 1872 provided that no Police-officer should record any statement, or any admission or confession of guilt, which might be made before him by a person accused of any offence: Provided that nothing should preclude a Police-officer from reducing such statement, or admission, or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

Any such statement, or admission, or confession reduced into writing ought not to form part of the record to be sent to the Magistrate.—*Smyth*, p. 85.

By s. 25 of the Evidence Act I of 1872, "no confession made to a Police-officer shall be proved as against a person accused of any offence;" and by s. 26, "no confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrates shall be proved as against such person:" "Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a Police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."—*Section* 27.

B and R, accused of offences under s. 414 of the Penal Code, gave information to the Police, which led to the discovery of the stolen property. This information was to the effect, that they (the accused) had stolen a cow and calf, and sold them to a particular person at a particular place. A Full Bench (MAHMOOD, J., dissenting) held, that s. 27 of the Evidence Act was a proviso not only to s. 26, but also to s. 25, and that, therefore, so much of the information given by the accused to the Police-officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved.—*Emp.* v. *Babu Lal*, I. L. R. 6 All. 509.

No judicial officer, however, dealing with the provisions of s. 27 of the Evidence Act, should allow one word more to be deposed to by a Police-officer detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused, so as in itself to be a relevant fact against him. Section 27 is not intended to let in a confession generally.—*Per* STRAIGHT, J., *Emp.* v.

Babu Lal, I. L. R. 6 All. 509, followed by NORRIS, J., in *Adu Shikdar*, I. L. R. 11 Cal. 635, p. 641; see *Emp.* v. *Pancham*, I. L. R. 4 All. 198.

The test of the admissibility under s. 27 of the Evidence Act of information received from an accused person in the custody of a Police-officer, whether amounting to a confession or not is:—"was the fact discovered by reason of the information and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact."—*Emp.* v. *Commer Sahib*, I. L. R. 12 Mad. 154; see *Adu Shikdar* v. *Emp.*, I. L. R. 11 Cal. 635: *Emp.* v. *Pancham*, I. L. R., 4 All. 198, and *Reg.* v. *Jora Hatji*, 11 Bom. H. C. R. 242: *Emp.* v. *Babu Lall*, I. L. R. 6 All. 509. In *Emp.* v. *Kamalia*, I. L. R. 10 Bom. 585, the accused were charged with the theft of some *jwari*. During the Police investigation they admitted before the Police that they had taken the grain and concealed it in a jar which they forthwith produced. The identity of the *jwari* recovered with that produced was not proved to the satisfaction of the Magistrate except by these admissions, and upon these admissions the accused were convicted of theft. It was held by the High Court that as the prisoners themselves produced the *jwari* it was by their own act and not from any *information* given by them that the discovery took place, and that section 27 of the Evidence Act consequently did not apply and that though the fact of the production of the property could be proved, the accompanying confession made to the Police was inadmissible in evidence.

Statements made to Police officers as to the ownership of property, which is the subject-matter of proceedings against them, although inadmissible under the Evidence Act as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an inquiry held by the Magistrate under s. 523, *post*.—*Emp.* v. *Tirbhovan Manekchand*, I. L. R. 9 Bom. 131.

In the case of *Emp.* v. *Dabee Pershad*, I. L. R. 6 Cal. 530: (S.C.) 7 C. L. R. 541, at the Criminal Sessions of the Calcutta High Court, PRINSEP, J., relying on the opinion expressed by PEARL, J., in *Reg.* v. *MacDonald*, 10 B. L. R. Appx. 2, held, that an admission, not being a confession, of guilt made by an accused person to a Police-officer, was admissible in evidence. Such an admission, however, would not be admissible if made in the course of an investigation under this Chapter. See *In the matter of Hiran Miya*, 1 C. L. R. 21: *Reg.* v. *Hurribole Chunder Ghose*, I. L. R. 1 Cal. 207: *Emp.* v. *Rama Birapa*, I. L. R. 3 Bom. 12: *Reg.* v. *Jora Husji*, 11 Bom. H. C. R. 442. See also *Emp.* v. *Meher Ali Malick*, I. L. R. 15 Cal. 589.

In the case of *Emp.* v. *Pandharinath*, I. L. R. 6 Bom. 34, it was held, that a statement made to a Police-officer, while in the custody of the Police, although intended to be made in self-exculpation, might be nevertheless an admission of a criminating circumstance, and, if so, it could not, under ss. 25 and 26 of the Evidence Act, be proved against the accused. In that case, the accused was charged, under ss. 467 and 471 of the Indian Penal Code, with having dishonestly used as genuine a forged cheque. MELVILL, J., in delivering the judgment of the Court, said: "The witness No. 14, a Police-officer, says: 'The accused was sent for and shown this cheque, and he said that one Kisan had given it to him. This was at the *farashkhana*. He was in custody. Accused said this *after arrest*.' The statement of the prisoner that Kisan had given him the cheque was used by the prosecution as an admission by the prisoner that he had had possession of the cheque, and it was put to the jury as amounting to such an admission. It is contended that ss. 25 and 26 of the Indian Evidence Act (I of 1872) prohibit such a use of such a statement when made to a Police-officer or by a person in custody of a Police-officer, and we have come to the conclusion that this contention is well founded."—See remarks of WEST, J., in the case of *Emp.* v. *Daji Narsu*, I. L. R. 6 Bom. 288, p. 291.

Presidency Towns.—This section does not apply to the Police Calcutta and in Bombay.—*Emp.* v. *Nimadhab Mitter*, I. L. R. 15 Cal. 595.

Dying Declaration.—The dying statement of a deceased person must be taken in the presence of the accused. If it is not so taken, the writing cannot be admitted to prove the statement made.—*In re Samiruddin*, I. L. R. 8 Cal. 211: (S.C.) 10 C. L. R. 11. The Chief Court of the Punjab has held, that a dying declaration made by signs given in response to questions put is admissible in evidence; but that in such a case it is essential that the statement should be a true record of what actually took place, and should show on the face of it the questions put and the nature of the signs made in reply.—*Bata* v. *Emp.*, Punjab Rec., 1896, p. 2. See s. 32 of the Evidence Act and *Emp.* v. *Abdullah*, I. L. R. 7 All. (F.B.) 380.

When any person whose evidence is essential to the conviction of a prisoner charged with the commission of a crime may be in imminent danger of dying before the case comes to trial, the deposition of the dying person should, if possible, be recorded in the presence of the accused or of attesting witnesses; and, in the event of his death, submitted at the trial with evidence of this fact.—*C. O. No.* 47, 31*st July* 1857; *Wilkins*, 2nd Edition, p. 9. The statement may be proved in the ordinary way by a person who heard it, and the writing may be used for the purpose of refreshing the memory of the witness who recorded the statement.—*Emp.* v. *Samiruddin*, I. L. R. 8 Cal. 211: (S. C.) 10 C. L. R. 11.

When a Police-officer, making inquiry in any case, has reason to believe that a person whose statement may have an important bearing on the case is in a dangerous state and likely to die before the completion of the proceedings, or before his deposition can be taken on oath in presence of the accused before a Magistrate, he should be most careful first to ascertain, in the presence of respectable witnesses, the apparently dying man's impression of his own condition, and next, to take down his statement *verbatim*. See Instructions to Police-officers, *Bengal Police Manual*, p. 379.

Magistrate" in s. 26 of the Evidence Act does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George, or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Criminal Procedure Code—Act III of 1891, s. 3.

163. No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

No inducement to be offered.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making, in the course of any investigation under this Chapter, any statement which he may be disposed to make of his own free will.

This section follows ss. 120 and 184 of Act X of 1872, specifying particularly the inducement, threat or promise, the offer of which it is sought to prohibit. The latter part of the section is more general than the corresponding sections, in so far that it applies to *any person*, and is not confined to the person arrested, as under Act X of 1872, but is confined to investigations under this Chapter.

Presidency Towns.—The section does not apply to investigations by the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

The Evidence Act (I of 1872) contains the following provisions as to confessions to Police-officers :—

Section 24.—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority [as to who is a person in authority, see *Reg.* v. *Navroji Dadabhai*, 9 Bom. H. C. R. 358, and *Emp.* v. *Mohun Lall*, I. L. R. 4 All. 46] and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. (See *Reg.* v. *Garner*, 1 *Denison's* Cr. Cas., Reserved, 329.)

Section 25.—No confession made to a Police-officer shall be proved as against a person accused of any offence.—See *Emp.* v. *Mathews*, I. L. R. 10 Cal. 1022; and cases cited in *Emp.* v. *Meher Ali Mullick*, I. L. R. 15 Cal. 589.

Section 26.—No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort of St. George or in Burma or elsewhere unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (Act III of 1891, s. 3.) (See as to proof of confessions made to Magistrates in Calcutta.—*Emp.* v. *Nil Madhub Mitter*, I. L. R. 15 Cal. 595).

Section 27.—Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a Police-officer, so much of such information, whether it amounts to a confession or not, as distinctly relates to the fact there by discovered, may be proved. See note to preceding section and *Adu Shikdar* v. *Emp.*, I. L. R. 11 Cal. 686, and *Emp.* v. *Nana*, I. L. R. 14 Bom. (F.B.) 260.

Section 28.—If such a confession as is referred to in s. 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

A confession, when fairly made, is not inadmissible as evidence, simply because at the time it was taken no formal accusation had been made against the party making it.—*Queen* v. *Ram Churn Chamar*, 4 W. R. Cr. 10. But where a disclosure or confession has been improperly obtained by a Police-officer, no part of his evidence as to the discovery of facts made in consequence of such disclosure or confession is legally admissible.—*Queen* v. *Dhurum Dutt Ojha*, 8 W. R. Cr. 13. In that case the prisoners made a confession on being told by the Police-officer that he would get them released if they spoke the truth. See *Bishoo Manjee*, 9 W. R. Cr. 16.

With reference to s. 26 of the Evidence Act it has been held, that the mere standing-by of a Magistrate when confessions are being made to and recorded by the Police for their own purposes will not make these confessions evidence. But if the Magistrate is himself conducting the investigation, then, although the prisoner may be in the custody of the Police at the time, the prisoner making a confession is liable to have that confession used against him.—*Reg.* v. *Domun Kahar*, 12 W. R. Cr. 82.

Extorting a confession by torture is punishable under ss. 331, 330, and 348, and extorting or attempting to extort a confession by criminal intimidation, under s. 506 of the Indian Penal Code.

In Madras, the head of a village is a Magistrate within the meaning of this Act, and the confession of an accused person in the custody of the Police, if made in his presence, is admissible as evidence.—*Mad. H. C. Pro.*, 14*th February*, 1860; *Weir*, p. 14; see *Mad. H. C. Judgt.*, 18*th September*, 1878; *Weir*, p. 15. So it was held that a village Magistrate was not a Police officer, and that a confession made to him was not inadmissible under s. 25 of the Evidence Act.—*Emp.* v. *Sama Papi*, I. L. R. 7 Mad. 287.

Whenever a confession or admission of guilt is made by any person in the presence of a Magistrate so as to be admissible as evidence against such person, the Magistrate should specially record the circumstances under which the confession or admission of guilt was made, and in whose custody the person was at the time, and whether the confession or admission of guilt was freely or voluntarily made.—*Bom. H. C. Cir.* 257.

In the case of *Queen* v. *Nabadwip Goswami*, 1 B. L. R. O. Cr. 20, PEACOCK, C. J., with reference to a statement made to a Police-constable when he arrested the prisoner, observed: "The answer did not amount to a confession of guilt, but was a statement of facts which, if true, showed

that the prisoner was innocent. It is not a confession obtained under an inducement of hope or fear. The only objection to the statement being admissible as evidence is, that it was made in answer to a question put by the Police-officer.

"The cases upon this subject in England are conflicting, but the later cases seem to show that statements made by a prisoner in answer to a question put by a Police-officer are admissible in evidence. In the case of *Reg.* v. *Berreman*, 6 Cox, C. C., 388, ERLE, C. J., refused to admit as evidence an answer given by a prisoner to a question put to him by a Magistrate; and a similar ruling by WILDE, C. J., is to be found in the case of *Reg.* v. *Pettit*, 4 Cox, C. C., 164. But in later case—*Reg.* v. *Cheverton*, 2 F. and F. 836,—ERLE, C. J., admitted as evidence against the prisoner a statement which she had made in answer to questions put to her by a Police-officer. In that case it appeared that Baxter, the Police-officer, had said to the prisoner—'You had better tell all about it, it will save trouble; and then put certain questions to the prisoner, which she answered. It was held that the answers given to Baxter were inadmissible, because they had been made under the influence of something in the nature of a threat or inducement. Afterwards another policeman put questions to the prisoner, which she answered, and it was objected that those answers were inadmissible as they had been made under the inducement held out by the former Police-officer. ERLE, C. J., after consulting WIGHTMAN, J., admitted the statements made to the second Police-officer, holding, as I suppose, that the answers were not given in consequence of the inducement held out by the first officer. That is the distinct authority that statements made by a prisoner in answer to questions put by a Police-officer are admissible, and it may be remarked that in that case the answers were held to be admissible, although the prisoner had not been cautioned.

"In the case of *Reg.* v. *Mick*, 3 F. and F., 822, it was held by MELLOR, J., that the confession made by a prisoner in answer to a question put to him by a Police-officer was admissible. MELLOR, J., in the case of *Reg.* v. *Mick*, to which I have referred, remarked, that many Judges would not receive the evidence, and that he highly disapproved of the course the Police had taken in asking questions.

"Having these conflicting decisions before us, I should be disposed to act upon the decision in the case reserved, even if it were not borne out by every principle of common sense. If an inducement is held out to a prisoner to make a confession by telling him that he will be better off if he makes a confession, he may be induced, if he knows that circumstances are strong to lead to a presumption of guilt, to make a confession although he is innocent. There may be reasonable grounds against the admission of such a confession, though perhaps it would be better to admit it and to leave those who have to determine as to the guilt or innocence of the prisoner to judge of the weight which ought to be attached to it. . . . I cannot at all agree with the remarks of MELLOR, J., and in the expression of his disapproval of the conduct of the Police-officer in asking questions, provided he does not hold out hope or fear as an inducement to confess.

"Some cases have gone to the extent of saying that a statement is not admissible if it is obtained by telling the prisoner he had better tell the truth. For my own part I cannot see any objection to telling every man that he had better tell the truth [see *Emp.* v. *Uzeer*, I. L. R. 10 Cal. 775], but that is very different from telling a man that he had better confess when you do not know whether he is innocent or guilty. Though it has been held, in some cases, that confessions obtained by asking questions are not admissible, and although law is said to be the perfection of reason, it has been distinctly ruled in England, and I believe without a dissentient voice, that confessions obtained by artifice or deception are admissible." See *Reg.* v. *Navroji Dadubhai*, 9 Bom. H. C. R. 358; *Emp.* v. *Mohan Lall*, I. L. R. 4 All. 46: *Emp.* v. *Pandharinath*, I. L. R. 6 Bom. 34.

A confession rightly admitted in the first instance should be struck out if afterwards it is shown that it was made under inducement, threat or promise—*Reg.* v. *Garner*, 1 Denison's Cr. Cas., Reserved, 329.

A statement by a prisoner admitting guilt, overheard by a policeman in an adjoining room, the prisoner being ignorant of the policeman's vicinity, may be proved.—*Reg.* v. *Sageena*, 7 W. R. Cr. 56.

In the case of *Emp.* v. *Uzeer*, I. L. R. 10 Cal. 775, where a Deputy Magistrate, before recording a confession, told the prisoner he had better tell the truth, it was held that the use of such language was calculated to hold out an inducement to the prisoner to confess, and that the confession taken was therefore inadmissible in evidence. See *Reg.* v. *Garner*, 1 Denison's Cr. Cas., Reserved, 329.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Power to record statements and confessions.

164. Any Magistrate not being a Police-officer may record any statement or confession made to him in the course of an investigation under this Chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and

when he records any confession, he shall make a memorandum at the foot of such record to the following effect :—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate."

This section specially limits the powers which it gives to Magistrates who are not Police-officers. Accordingly, Police-officers having magisterial powers will not be competent to record statements or confessions under this section. See *Queen* v. *Hurribole Chunder Ghose*, I. L. R. 1 Cal. 207.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595. Accordingly in those towns if it appears that a confession has been made to a Magistrate and that it was made voluntarily and the evidence of the Magistrate that such confession was made is admissible under s. 26 of the Evidence Act.—*Ibid.* Section 164 not applying, it is unnecessary that such confessions should be recorded.

The section is precise as to the time up to which, in the course of proceedings, a statement or confession may be recorded ; it further provides, not that a confession shall be taken, but that it shall be recorded and signed. Like s. 122 of Act X of 1872, it contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is to be inquired into. See *Emp.* v. *Anuntram Singh*, I. L. R. 5 Cal. (F. B.) 954 : (S. C.) 6 C. L. R. 297 : *Emp.* v. *Yakub Khan*, I. L. R. 5 All. 253 ; *Queen* v. *Jafoo*, 23 W. R. Cr. 16 ; *In re Behari Hadji*, 5 C. L. R., 238 : *Emp.* v. *Munnoo Panioli*, 4 C. L. R. 137 : (S. C.) [*nomine*] *Emp.* v. *Mannoo Tamoolee*, I. L. R. 4 Cal. 696 ; *Reg.* v. *Shivya*, I. L. R. 1 Bom. 219 : *Krishnomonee* v. *Emp.*, 6 C. L. R. 289. Accordingly, where it appeared that the Magistrate who recorded a confession was himself the Magistrate who conducted the inquiry preliminary to committal, and had jurisdiction so to do, the Court refused, notwithstanding that the Magistrate had noted that the confession had been taken under s. 122 of Act X of 1872, to treat the confession as taken under that section.—*Emp.* v. *Anuntram Singh*, I. L. R. 5 Cal. (F. B.) 954 : (S. C.) 6 C. L. R., 297. Such a confession, it was held, must be treated as an examination under s. 193 of Act X of 1872 (corresponding with s. 242 of this Act), notwithstanding that the prisoner might have been brought before the Magistrate before the conclusion of the Police investigation.—*Ibid.* To such a confession the provisions of s. 346 of Act X of 1872 applied.—*Ibid.* The Full Bench in the last cited case distinguished the case of *Emp.* v. *Mannoo Tamoolee*, I. L. R. 4 Cal. 696 : (S. C.) [*nomine*] *Emp.* v. *Munnoo Panioli*, 4 C. L. R. 137, where it appeared that though the Magistrate who recorded the confession subsequently conducted the preliminary inquiry, yet, at the time of recording the confession, he was outside the limits of his jurisdiction, and had no power to take up the preliminary inquiry.

In *In re Behari Hadji*, 5 C. L. R. 238, it was held, that s. 122 of the former Code applied also to a confession made during or before the commencement of an investigation by the Police. See Schedule III (7), which gives power to a Magistrate of the third class to record confessions or statements during a Police investigation under this section.

A Magistrate is prohibited from recording a confession until he has actually satisfied himself by questioning the person making it that it is voluntary.—See *Jai Narayan* v. *Emp.*, I. L. R. 17 Cal. 862, p. 871, and he ought to be so satisfied before he proceeds to record the confession.

'Upon questioning the person' making the confession, the Magistrate is only to put questions to the accused as to whether or not the confession was made voluntarily.—*Reg.* v. *Bai Ratan*, 10 Bom. H. C. R. p. 175.

While s. 122 of Act X of 1872 provided that confessions should be *taken* in the manner provided by s. 346 (corresponding with s. 364 of this Act), this section expressly provides that such confessions shall be recorded and signed. The reason for requiring the signature of the accused was probably to furnish a test whether the confession was voluntarily made and free from controlling influences and to afford him *a locus pœnitentiæ*—an ultimate opportunity before the final completion of the record of indicating that the confession was not voluntarily.—*Reg.* v. *Bai Ratan*, 10 Bom. H. C. R. p. 175.

In the case of *Reg.* v. *Bai Ratan*, 10 Bom. H. C. R. 166, a Full Bench of the High Court at Bombay held, that a confession recorded under s. 122 of Act X of 1872 was inadmissible in evidence unless signed or attested by the mark of the accused. That case is now, as to this point, superseded by s. 533, *infra*. By that section it is expressly provided that where it appears in recording any statement or confession of an accused person under this section (164) or s. 364 (*infra*), that the provisions of such sections have not been fully complied with, evidence may, notwithstanding s. 91 of the Evidence Act, I of 1872, be received that the accused duly made the statement recorded, provided the error has not injured the accused in his defence. The cases of *Reg.* v. *Omriti Govinda*, 10 Bom. H. C. R. 497 : *Emp.* v. *Anuntram Singh*, I. L. R. 5 Cal. (F. B.) 954 : (S. C.) 6 C. L. R. 297 : *Noshai Mistri* v. *Emp.*, I. L. R. 5 Cal. 958 : (S. C.) 6 C. L. R. 353 : *Emp.* v. *Mannoo Tamoolee*, I. L. R. 4 Cal. 696 : (S. C.) [*nomine*] *Emp.* v. *Munnoo Panioli*, 4 C. L. R. 137 : *Emp.* v. *Harikisto Biswas Bose*, 5 C. L. R. 209, are also superseded on this point by s. 533.

"In a recent case in Madras, PARKER, J., expressed an opinion that the provisions of s. 164 are imperative, and s. 533 will not render a confession admissible in evidence where no attempt has been made to conform to the provisions of the former section.—*Emp.* v. *Viran*, I. L. R. 9 Mad. 224.

There the Deputy Magistrate of Malabar, purporting to act under the provisions of the Mapilla Act (Madras Act, XX of 1859), recorded a statement in the nature of a confession made by V, who was under arrest on suspicion of being concerned in a Mapilla outrage. This statement, which was made in Malayalam, was recorded in English in the form of a narrative, and was signed by the Magistrate only. The same Magistrate shortly afterwards, purporting to act under the Code of Criminal Procedure, before any evidence was recorded against V, examined him as to this statement, which was read over and translated to him. In answer to questions, V admitted that he had made it voluntarily. This examination was recorded according to the provisions of s. 364 of the Code of Criminal Procedure. After other evidence was recorded, V retracted his statement. He was committed to the Sessions, tried and convicted mainly on his own recorded statement and examination.

The Deputy Magistrate was examined as a witness, and stated that the statement recorded by him was made by V, and was correctly recorded and was made voluntarily.

It was held, that the record of the statement made by V to the Deputy Magistrate was not admissible in evidence against V.

PARKER, J., also was of opinion that if the confessional statement of V was recorded by the Magistrate in his executive capacity, it was not receivable in evidence under s. 80 of the Evidence Act, and further, that the action of the Magistrate in examining V as to his confessional statement before there was any legal evidence on the record against him was illegal, and, therefore, the record of such examination could not be used in evidence against V, and inasmuch as the record of the statement of V was not admissible, secondary evidence thereof could not be given.

Language.—Under s. 364, *post*, a confession is to be recorded in the language in which the accused person is examined, or if that is not practicable in the language of the Court or in English. If it is impracticable that must be shown by the prosecution.—*Jai Narayan* v. *Emp.*, I. L. R. 17 Cal. p. 870, *per* MACPHERSON and HILL, JJ. Where it was not shown to be impracticable and a confession made in a vernacular language was recorded in English, PRINSEP and BEVERLEY, JJ., held that it might be presumed that the law was complied with and that the confession recorded in English was properly recorded.—*Foolchand* v. *Emp.*, I. L. R. 18 Cal. 549. In the case of *Emp.* v. *Viran*, I. L. R. 9 Mad. p. 240, however, BRANDT and PARKER, JJ., held that no presumption could arise that a confession was "duly taken," and taken according to law when on the face of it it appeared that it was not duly taken. In the case of *Emp.* v. *Nimadhub Mitter*, I. L. R. 15 Cal. 595, the Full Bench expressed a doubt whether the provisions of s. 164 read with s. 364 would be complied with where answers made by an accused to a Magistrate in one language are taken down in another, unless it could be shown to be impracticable to have taken down the answers in the language in which they were given, and whether the defect could be cured by s. 533.—See *Tiku Mya*, 1 C. L. R. (F. B.): (S. C.) I. L. R. 8 Cal. 618 (*note*): *Fekoo Mahto* v. *Emp.*, I. L. R. 14 Cal. 539: *In re Bunshi Sheikh*, I. L. R. 6 Cal. 816.

In the case of *Emp.* v. *Sagambur*, 12 C. L. R. 120, the Court (MCDONELL and O'KINEALY, JJ.) expressed an opinion that an omission to record the questions put to an accused in taking his statement does not render such statement inadmissible.

It seems that an accused person who refuses to sign a statement or confession made by him commits no offence punishable under s. 180 of the Indian Penal Code.—*Emp.* v. *Sirsapa*, I. L. R. 4 Bom. 15—the provision that the accused shall sign the record being nothing more than a direction to the Magistrate or Sessions Judge as to the manner of recording such examinations, and in no way casts any obligation on the accused.—*Ibid*, *per* KEMBALL, J. See *Reg.* v. *Bai Ratan*, 10 Bom. H. C. R. 166: *Reg.* v. *Apabin Kesu*, 10 Bom. H. C. R. 181: *Reg.* v. *Shivya*, I. L. R. 1 Bom. 219: and compare *Emp.* v. *Ramanjiyya*, I. L. R. 2 Mad. 5. In the first of these cases, WESTROPP, C. J., said:—"It seems to me of the essence of such confessions and statements that they should be voluntarily made, and that they cannot be considered as complete until signed by the accused person."

Chapter XXV deals with the recording of evidence.

Where the statement or confession is made through an interpreter in a language other than that of the Court, it is not necessary that it should be recorded in that language. The language in which it is conveyed to the Court by the interpreter is the language in which it should be recorded. —*Emp.* v. *Vaimbiles*, I. L. R. 5 Cal. 826.

Memorandum.—The memorandum to be made under this section is fuller than that required under the corresponding section of the former Code. The latter sentence in the memorandum seems to have been inserted in accordance with the decision of the Bombay High Court in the case of *Reg.* v. *Shivya*, I. L. R. 1 Bom. 219.

The Evidence Act, I of 1872, s. 80, provided that whenever any document is produced before any Court purporting to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, the Court shall presume that the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, is true; and that such statement or confession was duly taken.—See *Emp.* v. *Viran*, I. L. R. 9 Mad. 240: *Foolchand* v. *Emp.*, I. L. R. 18 Cal. 549: *Emp.* v. *Sunder Singh*, I. L. R. 12 All. 595.

A confession does not become inadmissible, merely because the memorandum required by law to be attached thereto by the Magistrate taking it has not been written in the exact form prescribed.—*Emp.* v. *Bhairon Singh*, I. L. R. 3 All. 338.

This section (164) authorizes a Magistrate to record the statement of a person who appears before him as a witness, as well as the statement or confession of a person accused of an offence.—*Emp.* v. *Malka*, I. L. R. 2 Bom. 643.

The practice of taking prisoners before a Magistrate not having jurisdiction in the case for the purpose of having a confession recorded is not generally desirable, but such a confession is legally admissible in evidence when duly proved.—*Reg.* v. *Valuda Jetha*, 7 Bom. H. C. R. Cr. 56.

A confession made by an accused person before a Magistrate who had jurisdiction to deal with the matter to which it related, might, it was held, be made the commencement of a trial or inquiry under Chap. XV of Act X of 1872 (Chap. XVIII of this Code), and be treated as a confession under s. 346 (s. 364 of this Code), whether or not the case was still under the investigation of the police.—*Krishnamones* v. *Emp.*, 6 C. L. R. 289.

It is not necessary for a Magistrate to caution a prisoner before recording a statement made by him.—*Proceedings, 9th December* 1869 : 5 Mad. H. C. R. Appx. xi ; Weir, p. 8. There is, however, nothing in the law to prevent a Magistrate[doing so. But where a Magistrate before recording a confession told the prisoner he had better tell the truth it was held that the use of such language was calculated to hold out an inducement to the prisoner to confess and that the confession taken was inadmissible.—*Emp.* v. *Uzeer*, I. L. R. 10 Cal. 775. See remarks of PEACOCK, C. J., in *Queen* v. *Nabadvip*, 1 B. L. R. O. Cr. 20.

The headman of a village, if a Magistrate and not also a Police-officer, is entitled to act under this section.—*Proceedings, 14th February* 1860 : 4 Mad. H. C. R. 2 : *Emp.* v. *Sami Papi*, I. L. R. 7 Mad. 287.

See s. 346, *infra*.

The following rule as to confessions is in force in Madras :—

Whenever a Police-officer is about to depose to a confessional statement made by a prisoner to him while in his custody, he should be asked whether a Magistrate was present. If not, the confessional statement is inadmissible, except so far as it relates to a fact discovered thereby.—*Mad. H. C. Pro., 13th September* 1864 ; *Weir*, p. 8.

Joint Trials.—In the case of *Emp.* v. *Daji Narsu*, I. L. R. 6 Bom. 288, it was held, that to render the statement of one person tried jointly with another for the same offence admissible against that other, it was necessary that it should amount to a distinct confession of the offence charged. WEST, J., said :—" It is obvious that Govinda (one of the prisoners) did not intend to criminate himself. His intention is to exculpate himself and make Daji the murderer of Narsu. When a person admits guilt to the fullest extent and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth, and the Legislature provides (see s. 30 of the Evidence Act) that his statement may be considered against his fellow-prisoners charged with the same crime. By exculpating himself Govinda fails to provide this guarantee, and his statement must be set aside in weighing the evidence against Daji." See *Noor Bux Kuzi* v. *Emp.*, I. L. R. 6 Cal. 279 ; (S. C.) 7 C. L. R. 385.

The word "confession," as used in the Evidence Act, must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt.—*Emp.* v. *Jugrup*, I. L. R. 7 All. 647. Accordingly, unless the admission of a prisoner amounts to an admission of guilt, the statement made by him cannot be used against a co-prisoner.—*Ibid.*

One prisoner cannot be convicted on the confession of another prisoner without further evidence in corroboration.—*Emp.* v. *Dosa Jeva*, I. L. R. 10 Bom. 231. Section 30 of the Evidence Act makes an exception, and its wording shows that the confession is merely to be an element in the consideration of the offence. Unless there is something more, a conviction upon it will still be a case of no evidence, and bad in law.—*Mad. H. C. Pro.*, 24th *January* 1873 ; Weir, p. 9.

A confessional statement made at the close of trial is not a plea of guilty upon which the Judge can record a finding without taking the verdict of the jury or the opinion of the assessors. After a prisoner has once claimed to be tried, all the evidence, including the prisoner's admission, must be laid before them.—*Mad. H. C. Pro., 12th November* 1866 : *Weir*, p. 8.

The following form was prescribed in Bengal for recording confessions of accused persons. Such confessions, it was pointed out, should invariably be recorded in the printed forms (supplied by the Superintendent of Stationery) :—

STATEMENT OF ACCUSED PERSON.

The statement of....., aged about.....years,
made before me....., Magistrate of the.....class,
at....., on the.....day of.....188 ;—
My name is..... ; my father's name is.....,
I am by caste....., and by occupation.....
My home is at Mouzah....., Thannah .....
District..... I reside at .....

(*Signature or mark of accused.*)

The above statement was made in my presence and hearing, and contains accurately the whole of the statement made by the accused person. I believe that this confession was voluntarily made.

(*Signature of Magistrate.*)

—*Cal. H. C. C. O., No. 3 of 24th March* 1880 ; *Wilkins*, p. 72. (See now memo. under this section.)

Instructions regarding the Recording of Confessions.—It is desirable that Magistrates should act with deliberation in examining persons brought before them for the pupose of making confessions, and should, as far as possible, satisfy themselves that the confession is voluntary, and this not merely from the declaration of the accused, but from an attentive observation of his demeanour.—*Cal. H. C. C. O., No. 3 of 24th March* 1880 ; *Wilkins*, p. 2.

It is not proper to allow the Police-officer who brought the prisoner to be present while the confession is being recorded by a mohurir, and to suggest questions to be put to the confessing prisoner—*Cal. H. C. C. O., No.* 7 of 30*th July* 1873 ; *Wilkins*, p. 2.

The following instructions have been issued by the Chief Court of the Punjab :—

(*a*) Statements of accused persons recorded under ss. 346 (364) and 122 (164) of the Criminal Procedure Code (Act X of 1872) must, whenever practicable, be recorded in the language in which they are made.

(*b*) When such language is not the language in ordinary use in the district in which the Court is held as determined by the Local Government under s. 337 (356), or the language prescribed by an order under s. 335 (357), the record of the statement must, in all apealable cases, be translated into English, where the Sessions Judge or Magistrate ordinarily writes his proceedings in English, and translations must be authenticated by the signature of the translator, and also of the Judge or Magistrate before whom the statement is made.—*Punjab Gazette*, 1878, Part III, p. 510.

The following rules, also, as to taking down confessions have been issued by the Chief Court of the Punjab :—

(1.) Every Magistrate about to record a confession under s. 122 (164) of the Criminal Procedure Code (Act X of 1872) shall write, in the language in which he ordinarily writes his judgments in criminal proceedings, a brief memorandum of the inquiry made by him, and which he is by law bound to make in order to ascertain that the accused person is acting voluntarily in making a confession.

(2.) The statement shall be fully and accurately written down in the language in which it is made by the accused person, and if not written by the Magistrate with his own hand, the Magistrate shall, as the examination proceeds, make a memorandum of it in the vernacular of the district, or in English, with his own hand and under his own signature.

(3.) The Magistrate shall only question the accused person so far as may be necessary to enable the Magistrate to understand what the accused person's meaning is. Every question shall be written down in full, together with the answer.

(4.) When the accused person has concluded his statement, the written record of his statement shall be read out to or shown to him by, or in the presence of, the Magistrate, and any explanations or additions to it made by the accused person shall be written down in the manner above prescribed.

(5.) The Magistrate shall then desire the accused person to add his signature or mark. If the accused person decline to affix his signature or mark, the Magistrate shall state the fact, and the reasons, if any, assigned by the accused person for so declining.

(6.) The Magistrate shall then certify, under his own hand, that the statement of the accused person was made in his presence and in his hearing, and that the whole of the statement so made has been accurately recorded and attested (if such be the case) by the accused person.

(7.) The Magistrate shall then add the memorandum prescribed by s. 122 (164), and his own signature and description in full.

(8.) The Magistrate may state in writing any other circumstance attending the making or recording of the accused person's statement. Any such statement made by the Magistrate, if not embodied in the certificate, must be separately signed by him.

(9.) The record will then be forwarded to the Magistrate by whom the case is inquired into or tried.

(10.) In every case in which the record of a confession by an accused person taken under s. 122 is received by the Magistrate inquiring into or trying the case, the Magistrate shall inquire from the accused person whether he made the statement purporting to have been made by him before the Magistrate from whom the record of the confession was received. The statement shall be shown or read to the accused person, and the fact noted by the Magistrate; and the accused person's answer to the question shall be recorded in full.

DISTRICT.

IN THE COURT OF.....

Queen-Empress v......

The confession of....., taken by me .....,
a Magistrate of the.....District. This.....day
of.....188...

Memorandum of Inquiry.

Mark or signature of accused..... (Signed) .....
Magistrate, ... *Class.*

Certified that the above confession was taken in my presence and hearing, and contains accurately the whole of the statement made by the accused [* and was attested by him as correct in my presence].

(Signed).....
Magistrate, ... *Class.*

I believe that this confession was voluntarily made.

(Signed).....
Magistrate, ... *Class.*

—*Punjab Gazette*, 1878, Part III, p. 272. (See now memo. under this section.)

The following rules were passed by the Bombay High Court under s. 292 of Act X of 1872 :—

It is not desirable that the Police-officer making an investigation under Chap. X of the Code of Criminal Procedure (Chap. XIV of this Act) should be present when confession is recorded under s. 122 (164) of the Code, nor should any Police-officer remain in the Magistrate's Court except such as may be necessary to secure the safe custody of the accused person. Under the direction contained in para. 6, page 27, of the High Court Circular Book, the Magistrate taking a confession should record whether the instructions contained in the present circular have been

* To be omitted if such be not the case.

complied with. In all important criminal cases, and especially in cases of murder and dacoity, it is desirable that the Police-officer by whom the investigation has been conducted should be examined as a witness in regard to the circumstances of the investigation. Each Police-officer should bring with him his diary and also the memorandum (*tipun*) of the statements taken down by him under s. 119 (102) of the Code of Criminal Procedure. An extract from his diary should be invariably recorded in the case. The memorandum (*tipun*) should not be recorded, but should be used by the Police-officer to refresh his memory if he is questioned as to the statements made to him by the witnesses.—*Bombay Gazette*, 1881, p. 473.

A statement taken down in the course of a Police investigation by a third class Magistrate under s. 164 is not evidence in a stage of a judicial proceeding within the meaning of ss. 191 and 193 of the Indian Penal Code such that, when the statement is contradicted afterwards before a Magistrate having jurisdiction, it will form a sufficient basis for an alternative charge of giving false evidence.—*Emp.* v. *Bharma*, I. L. R. 11 Bom. 702.

Search by Police-officer.

165. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the seach in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched ; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

Where the officer in charge of a Police-station, or officer making an investigation, is unable to conduct the search in person, a subordinate officer can only act under a written order, in which the thing for which the search is to be made and the place to be searched are specified.

Search by night is not illegal, but when the search can be delayed without danger to the chance of recovering property, &c., it should be postponed.—*Bengal Police Manual*, p. 322. Except under special circumstances, the search must be made between sunrise and sunset. If, for special reason, a search be made between sunset and sunrise, such reason must be reported to the District Superintendent of Police for the information of the Magistrate having jurisdiction. If a search is required in any place within the limits of another station, it can only be made through the officer in charge of the latter, on the requisition, oral or written, of the former.—*Bengal Police Manual*, 2nd Edition, p. 402.

Under s. 12, Act V of 1861, it has been declared that the Extra Assistant Superintendents of Police, attached to a detective department, shall have the powers of officers in charge of Police-stations for the purpose of searching houses in each district where they may be employed. The Extra Assistants, while exercising these powers, can, under the terms of this section of the Criminal Procedure Code, by written order in any particular case, direct the head constables of the detective department, who are subordinate to them, to make search in any house or place.—*Government Order No.* 4714, *dated 27th July* 1869 ; *Bengal Police Manual*, 2nd Edition, p. 402.

Under s. 23 of Act V of 1861, it is lawful for every Police-officer, for the purposes mentioned in that section, without a warrant to enter and inspect any drinking shop, gaming-house or other place of resort of loose and disorderly characters ; and under s. 23 of Act VII (B.C.) of 1864, any Police-officer may enter and inspect, at any time, by day or night, any salt works or any warehouse in which salt is stored. Section 153, *supra*, gives an officer in charge of a Police-station power to enter any place within the limits of the station for the purpose of inspecting weights and measures. See ss. 96–106, *supra*, as to search-warrants.

Officers in charge of Police-stations may also institute searches—*1st*, for contraband salt, &c. (s. 28, Act VII (Ben.) of 1864 ; Act I (Mad.) of 1882, ss. 21, 23 ; Act VII (Bom.) of 1873, s. 8 ; Act XII of 1882, ss. 15, 18) : *2nd*, for stamped paper not bearing the proper distinguishing mark, and not authenticated as having been purchased from Government (s. 7, Act XIX of 1858). Any Police-officer above the rank of head constable, and head constables in charge of outposts of the 1st and 2nd grade, may institute searches for excisable articles liable to confiscation under the Excise Acts.

No Police-officer shall be compelled to say whence he got any information as to the commission of an offence.—*Evidence Act, I of 1872, s. 125.*

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

When officer in charge of Police-station may require another to issue search-warrant.

166. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Procedure when investigation cannot be completed in twenty-four hours.

167. Whenever it appears that any investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the Police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Subdivisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Under s. 124 of Act X of 1872, the Police officer was directed, in cases where the investigation could not be completed in twenty-four hours, to forward the accused, with a statement of the offence for which he had been arrested, not to the nearest Magistrate, but to the Magistrate having jurisdiction. Instead of the statement of the offence, a Police-officer must now, in such circumstances, transmit a copy of the entries in the diary directed to be kept under s. 172, *infra*.

Magistrates of the third class, under their ordinary powers, have power to authorize detention of a person during a Police investigation under this section.—*Sched. III* (8).

The intention of the Legislature is that an accused person should be brought before a Magistrate competent to try or commit with as little delay as possible.—*Manikam* v. *Queen*, I. L. R. 6 Mad. 63. In proceedings before the Police under this Chapter the period of remand cannot exceed in all fifteen days, including one or more remands.—*Emp.* v *Engadu*, I. L. R. 11 Mad. 98.

While a case was being investigated under this Chapter by A, a Police-officer, T presented a petition to the Magistrate having jurisdiction to try the case, accusing W of being concerned in the commission of the offence, and prayed that he might be arrested and sent to the Police-officer investigating the case. W was accordingly arrested and brought before the Magistrate, who, having examined T on oath and taken W's statement, made an order in the petition to the following effect: "As no Police report has been made on this matter, and the petitioner only has presented this petition, ordered that these papers of W be sent to the District Superintendent of Police: and if a report of the matter be made, the case may be sent up according to rule with the papers." In accordance with this order, W was taken to the District Superintendent of Police, and was sent by that officer to A. A negligently allowed W to escape, and was tried and convicted under s. 222 of the Indian Penal Code, it being held that the order of the Magistrate might be taken to have been passed under s. 167 of the Code, and therefore that W was lawfully committed to the custody of the Police, and that A was legally bound to retain him in custody until released therefrom by due course of law.—*Emp.* v. *Ashraf Ali*, I. L. R. 6 All. 129.

Detention.—The retaining of a person in a particular place, or the compelling him to go in a particular direction, by force of an exterior will, overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will.—*Parankusam Narasaya Pantulu* v. *Stuart*, 2 Mad. H. C. R. 196. See *Bird* v. *Jones*, 7 Q. B. 742. In *The Queen* v. *Behary Singh*, 7 W. R. Cr. 3, MARKBY, J., said :—"At the expiration of twenty-four hours, unless the special order of the Magistrate has been obtained, the prisoner must either be discharged or sent to the Magistrate, and any longer detention is absolutely unlawful. . . . . Though this is not so express upon the place as the time of confinement, it is perfectly clear that it was intended that where a Police officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the Police-station and be placed in the custody of the officer in charge of the station, who is the person entrusted by the Act with the conduct of the inquiry" (p. 6). The time during which a person is kept in wrongful confinement is immaterial, except with reference to the extent of punishment of the person causing the wrongful confinement.—*Queen* v. *Supromunno Ghosal*, 6 W. R. Cr. 88.

Wrongful confinement is punishable under s. 342 of the Penal Code. Section 340 of the same Code provides : "Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person."

A Police-officer cannot be convicted under s. 29 of Act V of 1861 for detaining a person for over twenty-four hours, unless there has been a continuous detention for over that period of time (*Indroboo Thaba*, 1 W. R. Cr. 5) ; but any continuous detention for over twenty-four hours is punishable under that section.—*Bussorum Doss*, 10 W. R. Cr. 36.

Under s. 344, *infra*, also, a Magistrate cannot remand an accused person to custody for more than fifteen days at a time. At the expiration of twenty-four hours from the time of arrest, the accused *must* be brought before a Magistrate, and then no remand without a hearing can last for a longer period than fifteen days.—*Rey.* v. *Surkya Valad Dhaku*, 5 Bom. H. C. R. Cr. 31. See the note to that section.

See note to s. 61, *supra*.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Report of investigation by subordinate Police-officer.

168. When any subordinate Police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

This section makes it imperative for a subordinate Police-officer, who has made an investigation under this Chapter, to report the result to the officer in charge of the Police-station. This was optional under the former Code, unless he were required by the officer in charge to submit a report.

The evidence should be sent in as found, and not kept by the Police until they have made it all complete.—*Queen* v. *Kodai Kahar*, 5 W. R. Cr. 6.

No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of an offence.—*Evidence Act, I of* 1872, *s.* 125.

Release of accused when evidence deficient.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a Police report, and to try the accused or commit him for trial.

Sections 62 and 63 of this Act provide for officers in charge of Police-stations reporting apprehensions made without warrant within the limits of their respective stations, and for the discharge of persons arrested.

Section 513, *infra*, provides that any person required by any Court or officer to execute a bond with or without sureties, may, in lieu of executing such bond, deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix.

The Magistrate "empowered to take cognizance of the offence on a Police report" would be any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or any other Magistrate specially empowered in that behalf.—*S.* 191, *infra*.

If the Police-officer finds that there is not sufficient evidence to justify the transmission of the accused, he shall release him on bail or recognizance, and shall submit a report through the proper officer for the orders of the Magistrate having jurisdiction.—*Smyth*, p. 83.

For form of bond and bail-bond on a preliminary inquiry before a Police-officer, see Sched. V, No. 25.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Case to be sent to Magistrate when evidence is sufficient.

170. If, upon an investigation under this Chapter, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a Police report, and to try the accused or commit him for trial; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate, or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case, as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

The Magistrate empowered to take cognizance of the offence on a Police report and to try or commit the offender for trial would be any Presidency Magistrate, District Magistrate, Subdivisional Magistrate, or any other Magistrate specially empowered in that behalf.—*S.* 191, *infra*.

In a preliminary inquiry before a Magistrate, evidence should be sent in as found, and not kept by the Police until they have made it all complete.—*Queen* v. *Kodai Kahar*, 5 W. R. Cr. 6.

When a District Superintendent, on looking into the case, finds that any witnesses have been unnecessarily sent in, he will at once report the circumstance to the Magistrate, in order that the witnesses may be discharged before the trial, should the Magistrate think proper. When such witnesses are dismissed, District Superintendents should inform the Police-officer who sent up the case, and point out the reasons of their not being required, thereby instructing him in his duty.—*Bengal Police Manual*, 2nd Edition, p. 382.

If, after investigation, the Police-officer finds sufficient evidence against the accused person, he must report the case to the Magistrate having jurisdiction.—*Smyth*, p. 84.

As to the procedure on forfeiture of a bond, see ss. 514, 515, and 516, *infra*.

Where a Magistrate thinks proper to escheat the recognizances of persons who have undertaken to appear to give evidence, and have failed, without just cause, to appear, and have thus created an obstruction to public justice, he ought to allow such persons an opportunity of justifying their default.—*Queen* v. *Dassoo Manjee*, 11 W. R. Cr. 39.

The following rules for the payment of the expenses of accused persons and witnesses previous to trial are in force in the Punjab:—

1. District Superintendents of Police receive a permanent advance from the treasury to supply the Police with the means of paying the diet of witnesses and prisoners, previous to a Police case being launched in the Judicial Courts, and any other contingent expenditure which may have been incurred.

2. The Police will provide for the diet of witnesses up to, and inclusive of, the day on which the charge sheet is handed over to the Judicial Court; and of the prisoner up to, and inclusive of, the day on which he is made over to the judicial lock-up.

3. At the time of presenting the charge sheet, the Police will move the Judicial Officer to pass the sums disbursed by the Police in that particular case. The full sum advanced will always stand to the personal debit of the District Superintendent, who will make his own arrangements under departmental orders with his subordinates.

4. No running accounts are to be allowed; as the contingent bills of the Police are passed, they will receive the amount in full.

5. The Police will have nothing to do with the diet of witnesses or of defendants in cases which are instituted in the Judicial Court, on the petition of the parties or the motion of the Court. The agency of the Police may be used to summon such witnesses and defendants; but if the parties are entitled to diet from Government, the Magistrate must direct his own nazir to pay them.—*Smyth*, p. 122.

The Police-officer should bind the accused, the complainant, and his witnesses to appear before the Magistrate within a reasonable time. In the case of *Queen* v. *Bheem Manjee*, 6 W. R. Cr. 62, it was held, that a Police-officer was not at liberty to bind witnesses over to appear a month after date.

For form of bond to prosecute or give evidence, see Sched. V, No. 26.

When an arrest is made by a private person, the Police-officer to whom he makes over the person arrested may search such person and place in safe custody all articles other than necessary wearing apparel found upon him.—*S.* 51, *supra*. See s. 53, *supra*, as to offensive weapons found upon a person arrested under Chap. V.

Property transmitted to the Magistrate under this section is to be retained by the Police pending the disposal of the case. When the case is decided, the property, if not returned to the owner, is to be made over to the nazir for safe custody. If it is of great value, and consists of bullion, coin or jewels, it should be made over to the treasurer.—*Smyth*, p. 88.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Complainants and witnesses not to be required to accompany Police-officer.

Complainants and witnesses not to be subjected to restraint.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer,

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Recusant complainant or witness may be forwarded in custody.

Under the last clause of s. 130 of Act X of 1872, it was provided that no Police-officer should accompany the complainant or his witnesses on his or their way to the Court of the Magistrate. It seems to have been found that, in many jungly and uninhabited places, the complainant and his witnesses were often glad to avail themselves of the escort and protection of the Police, and accordingly the first clause of this section provides merely, that they shall not be required to accompany the Police, but there appears to be nothing in the section to prevent their doing so.

Disobedience to the directions of this section with intent to cause injury to any person, or with the knowledge that it is likely to cause such injury, is punishable under s. 166 of the Indian Penal Code.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Diary of proceedings in investigation.

172. Every Police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the Police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them, merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

This section does not apply to the Police in Calcutta and Bombay. But under s. 44 of Act V of 1861, all Police-officers in charge of a Police-station are required to keep a diary, and the Magistrate of the District is authorized to call for and inspect it.

Statements to Police.—Statements of witnesses recorded by a Police-officer while making an investigation under s. 161 form no portion of the Police-diaries referred to in this section, and an accused person on his trial has a right to call for and inspect such statements and cross-examine the witnesses thereon.—*Bikao Khan* v. *Emp.*, I. L. R. 16 Cal. 610: *In re Mohamed Ali Hadji*, I. L. R. 16 Cal. 612, *note*. Although recorded in the special diary kept under s. 172 the statements are not prirllegol.- *In re Sheru Sha*, decided by the Calcutta High Court, 29th March 1883. Such statements are not evidence at any stage of a judicial investigation.—*Emp.* v. *Jemal*, I. L. R. 11 Bom. 639.

Sections 161 and 145 of the Evidence Act, 1 of 1872, are as follows :—

Section 161.—Any writing referred to under the provisions of the two last preceding sections (as to refreshing memory) must be produced and shown to the adverse party if he requires it. Such person may, if he pleases, cross-examine the witness thereupon.

Section 145.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Sections 159 and 160 of the Evidence Act are also important.

In giving evidence, a Police-officer may refresh his memory by referring to documents in which he has reduced into writing statements of persons examined by him during an investigation, but the documents themselves cannot be read as evidence; and a Judge cannot read such documents to a jury in order to point out the discrepancies between the evidence and previous statements of the witnesses.—*Roghuni Singh* v. *Emp.*, I. L. R. 9 Cal. 455.

A prisoner has no right to insist that a Police-diary, if not in Court, shall be sent for, or, if it be in Court, that it be referred to for the purpose of refreshing the the memory of a Police-officer under examination. The right is the right of the Court.—*In re Kali Charn Chunari*, 10 C. L. R. 51: (S. C.) I. L. R. 8 Cal. 154. In that case, WILSON, J., remarked: "I know of no authority for saying that a witness can be compelled to refresh his memory from any document, unless the document is either in the possession of the party who desires to put it to the witness, or is at least such as he can insist on having produced."

A Police-officer making an investigation is bound to record his proceedings day by day in a diary. The Magistrate of the District should see that the diary is regularly kept up, and that each day's diary has been forwarded to, and has regularly reached, the District Superintendent in course of post, this being the only security against the contents being ante-dated.—*Smyth*, p. 84. See Police Rules in the Punjab, dated 13th February 1885.—Punjab Rec., 1885, Police Cir., p. 3. See further as to the duties of Magistrates in supervising the Police.—*Ibid.*

See notes to ss. 154 and 169, *ante*.

Presidency Town.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Report of Police-officer.

173. Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to a Magistrate empowered to take cognizance of the offence on a Police report, a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

"Where a superior officer of Police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the Police-station to make further investigation." [Act X of 1886, s. 7.]

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

The amendment by Act X of 1886 gets rid of what seemed to be a conflict between this section and s. 158, *supra*, as to whether a report should be submitted through a superior officer. The matter is now left to the Local Government.

See also ss. 51 and 53, *supra*.

For form of report of investigation in Burma, see *Burma Gazette*, 1873, Part II, p. 7.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Police to inquire and report on suicide, &c.

174. Every officer in charge of a Police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government or by any general or special order of the District or Subdivisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Subdivisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay investigations under this section may be made by the Head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests,—namely, any District Magistrate or Subdivisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

This Chapter generally does not apply to the Police in Calcutta and Bombay. Formerly it applied to the Police in the town of Madras. Now, however, by Act V of 1889 (an Act to abolish the office of Coroner in Madras,) sections 174, 175 and 176 of the Code in their application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras, are to be read as follows, namely :—

174. "(1) An officer in charge of a Police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the Commissioner of Police and, in the absence of any rule or order under the next following section to the contrary, proceed to the place where the body of such deceased person is, and there, in the presence of five or more respectable inhabitants of the neighbourhood, make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

"(2) The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the office of the Commissioner of Police.

"(3) In any of the following cases, namely :—

(*a*) in any case in which the Local Government may by rule so require,

(*b*) in any case in which death appears to have been caused by violence or there is any doubt regarding the cause of death,

(*c*) in any other case in which the Police-officer considers it expedient so to do

he shall cause the body to be examined by a medical officer appointed in this behalf by the Local Government.

"(4) The Police-officer may, by order in writing, summon five or more persons as aforesaid for the purpose of the investigation under this section, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to

answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

"(5) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

"175. (1) The Local Government may make rules, and the Commissioner of Police may from time to time make general or special orders consistent with those rules, defining—

(*a*) the circumstances in which an officer in charge of a Police-station, after giving intimation to the Commissioner of Police of any such event as is mentioned in clause (*a*), clause (*b*) or clause (*c*) of sub-section (1) of the last foregoing section, is not to proceed to discharge any of the further functions of such an officer under that section, and

(*b*) the circumstances in which, and in such circumstances the authority by whom, those further functions are to be discharged.

(2) The authority to whom the discharge of such further functions may be entrusted by rules or orders under sub-section (1) may be the Commissioner of Police or any of his Deputies or Assistants or any other Police-officer of rank not below that of Inspector, and such authority, in discharge of those functions, may exercise any of the powers and shall perform the duties which, but for such rules or orders, might be exercised and should be performed by the officer in charge of the Police-station.

"176. (1) The Chief Presidency Magistrate, or such other Presidency Magistrate as the Chief Presidency Magistrate may depute in this behalf, shall, when any person dies while in the custody of the Police or in prison, and may in any other case mentioned in section 174, sub-section (1), clause (*a*), clause (*b*) or clause (*c*), hold an inquiry into the cause of death, either instead of, or in addition to, the investigation under either of the two last foregoing sections; and, where he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, and shall record any evidence taken by him in the course of the inquiry as nearly as may be in the manner prescribed in section 302.

"(2) Whenever the Commissioner of Police or a Presidency Magistrate considers it expedient, for the discovery of the cause of the death of a deceased person whose body has been interred, that an examination should be made of the dead body, such Commissioner or Magistrate, as the case may be, may cause the body to be disinterred and examined."

Every village headman, village watchman, village Police-officer, owner or occupier of land, or the agent of such occupier, and every officer employed in the collection of revenue or rent of land, on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, whichever is nearer, any information which he may obtain respecting the occurrence of any sudden or unnatural death under suspicious circumstances.—*S.* 45, *supra*.

For the rules as to *post-mortem* examinations, see *Bengal Police Circulars*, 1870, pp. 59—62.

The following circular has been issued with regard to inquiries into cases of unnatural death :—

The Lieutenant-Governor does not think that special diaries are intended or necessary in all cases of inquiry into unnatural deaths. The report prescribed in s. 133 of the Criminal Procedure Code (s. 174 of this Act) is very much the same in character as the special diary of s. 126. If the Police-officers investigating see reason to suspect *crime*, the inquiry becomes one under s. 126, and special diaries become, as a matter of course, necessary; but, in ordinary cases, in which the inquiry is made and completed in a few hours, there seems to be no necessity for reporting the facts, first in a special diary, and then in the report prescribed by s. 133. When, however, the inquiry is prolonged, or lasts over more than one day, the diary should be sent to inform the District Superintendent and Magistrate of what is going on.

2. The Lieutenant-Governor would, therefore, rule, that in cases of any complexity, or in which the inquiry lasts over one day, or in which crime is suspected, special diaries should be sent in anticipation of the final report, which will be made under s. 127 if a crime is detected, and under s. 133 (s. 174) if the death is from accident or natural causes. It is to be understood that, in the Station-diary, everything done by the Police will be entered. The above orders apply only to the copies or special diaries sent in to head-quarters.—*Bengal Police Circular*, 1872, p. 107.

In Madras, all commissioned medical officers, all warrant medical officers, and all hospital assistant medical officers were authorized to examine bodies forwarded to them for that purpose under the provisions of the corresponding section of *Act X* of 1872.—*Notification, December 11th*, 1874; *Madras Gazette*, 1874, p. 1834.

The hospital assistants in charge of the dispensaries at Supa, Halial, Yelapur, Mundagod, and Honore have been appointed medical officers to conduct *post-mortem* examinations.—*Bombay Gazette*, 1874, p. 338.

For the rules for the guidance of medical officers in Bombay in conducting *post-mortem* examinations, and examining wounded persons, see *Circular* No. 1353 of 23rd April 1868; *Bombay Gazette*, 1873, p. 947.

For the rules with reference to *post-mortem* and medico-legal examinations in force in the Punjab, see *Punjab Gazette*, 9th July 1874, Part III, p. 274, and *Punjab Gazette*, 1883, p. 52.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595.

Power to summon persons.

175. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all

questions, other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

Formerly this section did not apply to the Police in the town of Madras. Now in its application to the area comprised within the local limits of the ordinary original Civil jurisdiction of the High Court at Madras it is to be read as follows, *viz.* :—

"175. (1) The Local Government may make rules, and the Commissioner of Police may from time to time make general or special orders consistent with those rules, defining –

(*a*) the circumstances in which an officer in charge of a Police-station, after giving intimation to the Commissioner of Police of any such event as is mentioned in clause (*a*), clause (*b*) or clause (*c*) of sub-section (1) of the last foregoing section, is not to proceed to discharge any of the further functions of such an officer under that section, and

(*b*) the circumstances in which, and in such circumstances the authority by whom, those further functions are to be discharged.

(2) The authority to whom the discharge of such further functions may be entrusted by rules or orders under sub-section (1) may be the Commissioner of Police or any of his Deputies or Assistants or any other Police-officer of rank not below that of Inspector, and such authority, in discharge of those functions, may exercise any of the powers and shall perform the duties which, but for such rules or orders, might be exercised and should be performed by the officer in charge of the Police-station.—Act V of 1889, s. 4 (2).

The order in writing may be in a prescribed form and lithographed.—*Smyth*, p. 85.

The issuing of a warrant or summons properly so called in criminal cases is the prerogative of the Magistrate only, and no writ from a Police-officer as such is to bear either of these designations.—*Ibid.*

Non-attendance in obedience to an order under this section is punishable under s. 174; and refusal to answer questions, other than questions tending to criminate, under s. 179 of the Indian Penal Code.

If a person knowingly answers falsely, he commits the offence of giving false evidence in a stage of a judicial proceeding under s. 193 of the Indian Penal Code.—*Emp.* v. *Parshram Ray Singh*, I. L. R. 8 Bom. 216; *Nathu Sheikh* v. *Emp.*, I. L. R. 10 Cal. 405.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 505.

Inquiry by Magistrate into cause of death.

176. When any person dies while in the custody of the Police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*), and (*c*), any Magistrate so empowered may hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Power to disinter corpse.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Under s. 135 of Act X of 1872, with the first part of which this section corresponds generally, the nearest Magistrate duly authorized under that Act to inquire into the cause of death was empowered to act. This section provides that, except in the case of a person dying while in the custody of the Police, not only the nearest Magistrate empowered to hold inquests, but any Magistrate so empowered, shall make inquiry into the cause of death.

The last para. of this section is new. See the Coroners' Act, IV of 1871, s. 11, amended by Act V of 1889.

Madras :—Formerly the section did not apply to the Police in the town of Madras.

Now in its application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court at Madras, it shall be read as follws, *viz* :—

"176. (1) The Chief Presidency Magistrate, or such other Presidency Magistrate as the Chief Presidency Magistrate may depute in this behalf, shall, when any person dies while in the custody of the Police or in prison, and may in any other case mentioned in section 174, sub-section (1), clause (*a*), clause (*b*) or clause (*c*), hold an inquiry into the cause of death, either instead of, or in addition to, the investigation under either of the two last foregoing sections; and, where he does so, he shall

have all the powers in conducting it which he would have in holding an inquiry into an offence, and shall record any evidence taken by him in the course of the inquiry as nearly as may be in the manner prescribed in section 362.

"(2) Whenever the Commissioner of Police or a Presidency Magistrate considers it expedient, for the discovery of the cause of the death of a deceased person whose body has been interred, that an examination should be made of the dead body, such Commissioner or Magistrate, as the case may be, may cause the body to be disinterred and examined."—*Act V of* 1889, *s.* 4 (2).

As in s. 135 of Act X of 1872, there is nothing in section 176 of this Code requiring the Magistrate, who holds an inquiry, to draw up a report, embodying the result of the inquiry, and submit the same to the Magistrate of the district.—*In re Troylokanath Biswas*, I. L. R. 3 Cal. 742: (S. C.) 3 C. L. R. 59. Where such a report is made, it is not a judicial proceeding, and therefore the High Court, it was held, under s. 290 of Act X of 1872, had no power to send for it.—*Ibid.*

Proceedings under this section, it is now declared by s. 435, *infra*, are not proceedings within the meaning of that section.

Presidency Towns.—This section does not apply to the Police in Calcutta and Bombay.—*Emp.* v. *Nilmadhub Mitter*, 15 Cal. 595.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.*

A.—Place of Inquiry or Trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

See s. 63, para. 1, of Act X of 1872, which provided that every offence, if triable by a Magistrate, should be tried in the district in which it was committed. See also s. 18, para 1, of Act IV of 1877. Nothing, however, in this Code affects any special jurisdiction conferred.—*S.* 1, *supra*. See s. 531, *post*.

Section 101 of the Mutiny Act does not deprive the Criminal Courts of jurisdiction over British soldiers committing offences within the territorial limits of such Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. It is merely permissive of a military trial being held.—*In re Felix Maguire*, 4 C. L. R. 432: (S. C.) I. L. R. 5 Cal. 124.

This section does not apply to an application for maintenance.—*Hildephonsus* v. *Malone*, Punjab Rec., 1885, p. 26.

See s. 549, *post*.

An order of a Magistrate committing a case to the Court of Sessions, it was held, is an order of a Criminal Court within the meaning of s. 531, *post*; and if such order, contrary to the requirements of this section, directs the commitment to be made to a Court of Sessions, which has no territorial jurisdiction, it is not to be set aside unless it appears that the error occasioned a failure of justice.—*Emp.* v. *Thaker*, I. L. R. 8 Bom. 312. See *Emp.* v. *Mangal Tekchand*, I. L. R. 10 Bom. 274.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Power to order cases to be tried in different Sessions Divisions.

* Under s. 156, *supra*, (which does not apply to the Police in Calcutta or Bombay—*Emp.* v. *Nilmadhub Mitter*, I. L. R. 15 Cal. 595,) any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of this Chapter relating to the place of inquiry or trial.

But no proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

The Local Government has no power under this section to transfer for trial to the Court of a Commissioner a criminal case duly committed for trial to the Court of the Recorder of Rangoon, but it has power to transfer a case from the District of Rangoon to the Sessions Division of Pegu.—*Emp.* v. *Nga Tha Moung*, I. L. R. 10 Cal. 643.

As to power of a High Court to transfer cases, see ss. 207 and 526.

Accused triable in district where act is done, or where consequence ensues

179 When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

This section includes, it seems, cases in which a person is accused of the commission of an offence by reason of anything which has been omitted to be done, for by s. 4 (*w*), *supra*, words which refer to acts done extend also to illegal omissions.

The Illustrations, with slight necessary alterations, correspond with the Illustrations to the corresponding sections of the former Acts.

In the Punjab the following directions were published for the guidance of Courts —

Under this and the following sections, a Magistrate should act solely with reference to the public convenience. Ordinarily, the proper district for the inquiry and trial of offences falling under those sections would be the district in which the witnesses could, with the least inconvenience, attend. If the Magistrate be of opinion that inquiry or trial can be more conveniently held in another district, he should at once address the Magistrate of that district. If the Magistrate of that district concur, the case will be transferred. If he dissent, the question may be referred to the Chief Court, and the Court under the provisions of s. 185 (s. 69 of Act X of 1872) will decide in which district the enquiry or trial shall be held. If the transfer is proposed by a Subordinate Magistrate, the application should be submitted through the Magistrate of the District, who will, if he considers the transfer desirable, forward it with his own recommendation to the Magistrate of the district in which he thinks the case should be tried.—*Smyth*, p 73.

Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this Chapter, be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and, in all other cases, the Judicial Commissioner, shall, for purposes of this section, be deemed to be the High Court —*S.* 185, *post*.

See *Mohesh Day* v. *Emp.*, Punjab Rec., 1885, p. 92.

Place of trial where act is offence by reason of relation to other offence.

180 When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence, may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

'Act' here includes also illegal omissions.—*S.* 4 (*w*), *supra*.

An important case bearing upon this section was decided by the High Court of Bombay under s. 67 of the former Code (X of 1872). There dacoity had been committed outside the British territory, but part of the stolen property had been found concealed by the accused in British territory. The Sessions Judge, who considered that he had jurisdiction under the section to try the accused for dacoity, convicted them of that offence. On a reference, the High Court thought that the conviction of dacoity could not be sustained, and altered the conviction to one of retaining stolen property known to have been obtained by dacoity. They said: "Had Velampor (where the dacoity took place) been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, as they would have the same legal character, have coalesced with the first and principal one so as to give jurisdiction under s. 67 of the Code of Criminal Procedure."—*Reg.* v. *Lakya Govind*, I. L. R. 1 Bom. 50. The High Courts of Madras and Calcutta have also decided in a similar manner.—*Reg.* v. *Adirigadu*, I. L. R. 1 Mad. 171: *Emp.* v. *Sunker Gope*, I. L. R. 6 Cal. 307: (S.C.) 7 C. L. R. 411. In the latter case, a Nepaulese subject, having stolen cattle in Nepaul, brought them into British territory, and it was held, that although he could not be tried for the theft itself, he might be convicted of dishonestly retaining the stolen property. See also *Reg.* v. *Bechar Mava*, 4 Bom. H. C. R. Cr. 38, and *Reg.* v. *Adirigadu*, I. L. R. 1 Mad 171; and *Mad. H. C. Pro., 4th March* 1875; *Weir*, p. 21: *Mad. H. C. Pro., 22nd February* 1879; *Weir*, p. 21.

Where certain persons who were not proved to be British subjects were found in a Native State in possession of property the subject of a dacoity committed in British India, and they were not proved to have taken any part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India, it was held that there was no offence proved to have been committed within the jurisdiction of a British Court.—*Emp.* v. *Kirpal Singh*, I. L. R. 9 All. 523. And where a foreign subject resident in foreign territory instigated the commission of an offence, which in consequence was committed in British territory, it was held, that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code. *Reg.* v. *Pirtal*, 10 Bom. H. C. R. 356.

The charge of dishonestly receiving or retaining stolen property in British India may be tried in British India, although the theft had been committed outside British India, as property which has been stolen now comes under the designation of "stolen property," whether the theft was committed within or without British India.—Act VIII of 1882, s. 4, which amends s. 410 of the Indian Penal Code.

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug, or belonging to a gang of dacoits, escape from custody, &c.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same, knowing or having reason to believe it to be stolen.

Stealing.

The last paragraph follows Illustration (*f*) of section 67 of Act X of 1872 which was as follows.—"A steals a buffalo from B in district W, and personally or by his agents conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y, or Z." It is, however, more general, and would seem to be wide enough, to allow the Courts here to inquire or try an offence of stealing which had taken place without British India, provided the property stolen were possessed within their jurisdiction by the thief, or by a person who received or retained it, knowing or having reason to believe it to be stolen. Under the former Code it was held, that where the theft took place in foreign territory, and the property stolen was brought into British territory, the Courts in the latter could not try the offence of theft.—*Reg.* v. *Adirigadu*, I. L. R. 1 Mad. 171 *Reg.* v. *Lakya Govind*, I. L. R. 1 Bom. 50: *Emp.* v. *Sunker Gops*, I. L. R. 6 Cal. 307: (S. C.) 7 C. L. R. 411.

Section 188 deals with offences committed by British subjects out of British India.

The general rule of international law is, that no Court has jurisdiction over foreigners in respect of offences committed in a foreign State. See *Reg.* v. *Pirtal*, 10 Bom. H. C. R. 356 : *Reg.* v. *Bechar Mara*, 4 Bom. H. C. R. 38 : *Reg.* v. *Adivigadu*, I. L. R. 1 Mad., 171. See also *Reg.* v. *Keyn*, L. R. 2 Exch. Divn. 63.

See note to s. 179, *supra*.

Under the present Code, where the accused, a subject of a Native State, committed theft at Rajkot Civil Station, which is not part of British India within the meaning of Statute 21 and 22 Vic., Cap. 106, and was found in possession of the stolen property at Thana, it was held that, as the accused was the subject of a Native State, and as the offence was not committed in British India, the Sessions Court at Thana had no jurisdiction to try the accused for the offence of theft; but it was competent to try him for dishonest retention of stolen propeorty under s. 410 of the Indian Penal Code, as amended by Act VIII of 1882.—*Emp.* v. *Abdool*, I. L. R. 10 Bom. 186; see *Alu* v. *Emp.*, Punjab Rec., 1883, p. 4. See also s. 458, *post*, and the notes thereto.

Where there was a conversion of goods at G, a foreign port, the goods having been entrusted to the accused to be carried from a port in British India to a port in British India, it was held that the Court at the port where the goods were entrusted to the accused had no jurisdiction to try him. It was also held that no offence was committed on the High Seas so as to give the Court jurisdiction under 12 and 13 Vic., Cap. 96, extended by 23 and 24 Vic., Cap. 88.—*Bapu Daldi* v. *Queen*, I. L. R. 5 Mad. 23. See also *Siddha* v. *Biligiri*, I. L. R. 7 Mad. 354.

Escape from Custody.—Section 223 of the Indian Penal Code applies only to cases where the person, who is allowed to escape, escapes from custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under civil process.—*Emp.* v. *Tufaullah*, I. L. R. 12 Cal. 190. See *Queen* v. *Bajjigam*, I. L. R. 5 Mad. 22.

Place of inquiry or trial where scene of offence is uncertain,

182. When it is uncertain in which of several local areas an offence was committed, or

or not in one district only;

where an offence is committed partly in one local area and partly in another, or

or where offence is continuing,

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or consists of several acts.

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

This is s. 67 of Act X of 1872, omitting the Illustrations and using the words 'local area' for 'district.' It was also incorporated as s. 21 of Act IV of 1877.

The words 'local areas' apply to a 'local area' over which the Criminal Procedure Code applies, and not to a local area in a foreign country or in other portions of the British Empire to which the Code has no application.—*In re Bichitranund Dass*, I. L. R. 16 Cal. 607. The Code does not apply to Mohurbunj or Kheonjur.—*Ibid.* See notes to s. 404, *post*.

The Illustrations to s. 67 of the former Act were as follows :—

(*a*) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage. (See next section.)

(*b*) An offence committed near the boundary between two districts may be inquired into and tried in either.

(*c*) A charge of being a thug, or having belonged to a gang of dacoits, may be inquired into and tried, wherever the person charged happens to be when the charge is made. (See preceding section.)

(*d*) A charge of having escaped from custody may be inquired into and tried wherever the persons charged happens to be when the charge is made.

(*e*) A charge of criminal misappropriation or of criminal breach of trust may be inquired into and tried either in the district in which the property which is the subject of the offence was received, or the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed. (See preceding section.)

(*f*) A steals a buffalo from B in district W, and personally or by his agents conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y, or Z. (See preceding section.)

The Madras High Court has held, that an offence is not a continuing one unless a British Indian Court has jurisdiction at the place of the inception of the offence.—*Mad. H. C. Pro.*, 31*st October* 1876; *Weir*, p. 21.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through, or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offences committed on a journey.

This section corresponds with Illustration (*a*) to s. 67 of Act X of 1872.

The words "journey or voyage" spoken of do not include a voyage on the High Seas or in a foreign territory, but are confined in their meaning to a journey or voyage within the territories of British India.—*Bapu Dulti* v. *Queen*, I. L. R. 5 Mad. 23.

In *Queen* v. *Abdul Ali*, 25 W. R. Cr. 45, where property was stolen during a short halt in the course of a journey, it was held that the persons charged with the offence could be tried at the place of destination.

So, where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Howrah by different trains, it was held that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, it was said that the journey should have been continuous from one terminus to the other without any interruption by either party.—*Reg.* v. *Piran*, 13 B. L. R. Appx. 4: (S. C.) 21 W. R. 64, following *Queen* v. *Malony*, 1 Mad. H. C. R. 193.

An offence is not a continuing offence unless a British Indian Court has jurisdiction at the place of the inception of the offence.—*Mad. H. C. Pro.*, 31*st October* 1876; *Weir*, p. 21.

In *Queen* v. *Malony*, 1 Mad. H. C. R. 193, the accused was charged with having been at Madras in a state of intoxication whilst actually employed upon the Madras Railway. It appeared that the accused had been removed from his post at a place outside the local limits of the High Court, although the train thereupon proceeded with him to Madras. It was held that the High Court had no jurisdiction to try the accused.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Offences against Railway, Telegraph, Post-office and Arms Act.

This section corresponds with ss. 238 and 239 of Act IV of 1877.

The law relating to Railways is Act IX of 1890; to Telegraphs, Act I of 1876; to the Post-office, Act XIV of 1866; and to Arms and Ammunition, Act XI of 1878.

185. Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this Chapter, be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

The doubt contemplated by the section is only as to the Court by which the offence is to be inquired into or tried—not for example a doubt as to competency of a committing Magistrate to commit an accused for trial.—*Emp.* v. *Clegg*, Punjab Rec., 1887, p. 24.

See notes to s. 179, *supra*.

186. When a Presidency Magistrate, a District Magistrate, a Subdivisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but

Power to issue summons or warrant for offence committed beyond local jurisdiction.

is, under some law for the time being in force, triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person, in manner hereinbefore provided, to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

The first part of this section corresponds substantially with s. 157 of Act X of 1872 and s. 54 of Act IV of 1877. As to the last clause, see s. 174 of Act X of 1872 and s. 55 of Act IV of 1877; see also Act XXIII of 1840, s. 7.

A Magistrate of the first class may be invested under this section with power to issue process for persons within the local limits of his jurisdiction who have committed an offence outside the local jurisdiction.—*Sched. IV* (6).

If any Magistrate, not empowered by law, erroneously, in good faith, issues process under this section for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits, his proceedings will not be set aside merely on the ground of his not being so empowered.—*S.* 529 *(d)*, *infra*.

In the Punjab, Magistrates of the first class had power, subject to the general control of the Magistrate of the district, to issue process for persons within the jurisdiction who have committed an offence outside the Magistrate's local jurisdiction.—*Punjab Gazette*, 1873, p. 361.

All senior officers in the Punjab at head quarter stations under the Magistrate of the district, who were Magistrates of the first class, were, under s. 157 of Act X of 1872, invested with powers to issue process for persons within the jurisdiction who had committed an offence outside the Magistrate's local jurisdiction.—*Punjab Gazette*, 1873, p. 75.

It is not essential to the validity of the process issued that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction. He may issue process from a place in a foreign territory.—*Reg.* v. *Locha Kala*, I. L. R. 1 Bom. 340.

Act XXI of 1870 (The Extradition Act) deals with the procedure to be adopted in case of offenders other than European British subjects where the offences have been committed outside British India.—*Ss.* 11—17, see *infra*. As to European British subjects who may have committed offences in the dominion of a Prince or State in India in alliance with Her Majesty, see s. 188, *infra*, and the notes thereto.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where warrant issued by Subordinate Magistrate.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

188. When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Liability of British subjects for offences committed out of British India.

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

This re-enacts s. 9 of the Foreign Jurisdiction and Extradition Act, XXI of 1879, which section has been repealed by this Act.—*Sched. I, infra.*

Act XXI of 1879 extends (*a*) to all European British subjects in the dominion of Princes and States in India in alliance with Her Majesty; (*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.—*S.* 8. The Act itself contains no definition of 'Native Indian subjects.' Mere owning some land in British India and occasional residence in British India do not themselves constitute a person a Native Indian subject.—*Fakir* v. *Emp.*, Punjab Rec., 1885, p. 1. The term "Native subject of Her Majesty" means only Native subjects *de jure*.—*Ibid.* As to who are included under the term Native Indian subject of Her Majesty, see also *Emp.* v. *Natwarai*, I. L. R. 16 Bom. 178.

In the case of *Emp.* v. *Magandal*, I. L. R. 6 Bom. 622, a Native subject of Her Majesty committed an offence (theft in a dwelling-house) in the territory of a Native State in alliance with Her Majesty, and was discovered in the territory of another Native State also in alliance with Her Majesty, and was from there brought down, or came of his own accord, to Ahmedabad. A certificate was granted by the Political Agent, that the offence ought, in his opinion, to be inquired into in British India. At Ahmedabad, a preliminary inquiry was held by a Magistrate, who committed the accused for trial by the Court of Sessions at Ahmedabad. The Bombay High Court held, that the Sessions Court was competent to try the offence committed in foreign territory, as if it had been committed in the Ahmedabad District, under s. 9 of Act XXI of 1879, for, when the accused was brought or came from foreign territory to Ahmedabad, he "was found" at a place in British India within the meaning of the section. The expression "was found" in that section, it was considered, must be taken to mean not where a person is discovered, but where he is actually present. See *Emp.* v. *Sarmukh Singh*, I. L. R. 2 All., 218: *Emp.* v. *Daya Bhima*, I. L. R. 13 Bom. 147.

When a charge is inquired into in British India without the certificate required by the section, the proceedings are void, and a commitment following on the inquiry must be quashed, although the committing Magistrate be a person competent to have granted the certificate. The defect cannot be cured under s. 532, for it is not a case of mere irregular commitment, as the charge could not be dealt with at all, until a certificate has been produced.—*Emp.* v. *Kathaperumal*, I. L. R. 13 Mad. 423.

The Civil Station of Rajkote is not part of British India within the meaning of Statute 21 and 22 Vic., Cap. 106.—*Emp.* v. *Abdul Latif*, I. L. R. 10 Bom. 186.

The Civil and Military Station of Bangalore is not British territory but a part of the Mysore State, but the Code of Criminal Procedure is in force therein by reason of declarations made by the Governor-General in Council in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, ss. 4 and 5. *In re Hayes*, I. L. R. 12 Mad. 39: *Bapu Daldi*, I. L. R. 5 Mad. 23. Justices of the Peace for the State of Mysore are also Justices of the Peace for Bangalore, and both the Civil and Sessions Judge and the District Magistrate of Bangalore being such Justices of the Peace are by virtue of s. 6 of the same Act, subordinate to the High Court at Madras.—*Ibid.*

French Territories.—The following letter, dated 28th June 1884, from the Secretary to the Government of Bengal, to all Commissioners of Divisions and District Magistrates, is important with reference to extradition between the French and British possessions in India: I am directed to state, for your information, that the question of extradition between the French and British possessions in India has recently been under the consideration of the Government of India and Her Majesty's Secretary of State for India. The practical question at issue was whether the procedure in cases of extradition should be regulated by the stipulations of Article IX of the Treaty of 7th March 1815 between Great Britain and France, which relates exclusively to the Indian possessions of the two countries, and under which persons accused of non-political offences of a grave character have hitherto been surrendered upon application, supported by a warrant and summary of the charges, no dispositions of witnesses being required; or whether it was necessary to observe the more stringent provisions of s. 14 of the Indian Extradition Act, XXI of 1879, and ss. 3 and 10 of Statute 33 and 34 Vic., Cap. 52, relating to extradition. The decision at which Her Majesty's Government has arrived is, that the existing practice is to be maintained, and that the Indian Act of 1879 and the English Statute of 1870 do not apply.

As to arrests of persons other than European British subjects escaping into British India, see s. 18, Chap. IV of Act XXI of 1879.

The following direction by the Governor General in Council, dated 22nd May 1885, has been published

Hyderabad —No 1037*I* — In exercise of the powers conferred by ss 4 and 5 of Act XXI of 1879, (The Foreign Jurisdiction and Extradition Act, 1879) and all other powers enabling him in this behalf, the Governor General in Council is pleased to direct as follows

(1) The Superintendent of the Hyderabad Residency Bazaars for the time being shall exercise, within the limits of the Hyderabad Residency Bazaars, the power of a District Magistrate as described in the Code of Criminal Procedure

(2) The First Assistant to the Resident at Hyderabad for the time being shall exercise, within the limits of the Hyderabad Residency Bazaar, the powers of a Court of Session as described in the Code of Criminal Procedure.

(3) The Resident at Hyderabad for the time being shall exercise, within the limits of the Hyderabad Residency Bazaars, the powers of a High Court as described in the Code of Criminal Procedure

(4) This notification applies to all proceedings except proceedings against European British subjects or persons jointly charged with European British subjects

(5) All criminal powers which may, before the date of this notification, have been exercised by the officers referred to herein within the limits specified shall be deemed to have been exercised in accordance with law

(6) As much of the Notification of the Government of India in the Foreign Department, No. 29, Judicial, dated the 18th January, 1869, as applies to the Hyderabad Residency Bazaars is hereby cancelled.

No 1039*I* —In exercise of the powers conferred by ss 4 and 5 of Act XXI of 1879 (The Foreign Jurisdiction and Extradition Act, 1879), and of all other powers enabling him in this behalf, the Governor General in Council is pleased to direct as follows —

(1) The Superintendent of the Hyderabad Residency Bazaars for the time being shall exercise, within the limits of His Highness the Nizam's Territories (in all cases in which such powers may lawfully be exercised by the Governor General in Council within such territories), the powers of a District Magistrate as described in the Code of Criminal Procedure

(2) The First Assistant to the Resident at Hyderabad for the time being shall exercise, within the limits of His Highness the Nizam's Territories (in all cases in which such powers may lawfully be exercised by the Governor General in Council within such territories), the powers of a Court of Session as described in the Code of Criminal Procedure

(3) The Resident at Hyderabad for the time being shall exercise the powers of a High Court as described in the said Code in respect of all offences over which magisterial jurisdiction is exercised by the Superintendent of the Hyderabad Residency Bazaars within the said territories, and in respect of all offences over which the jurisdiction of a Court of Session is exercised by the First Assistant to the Resident within the said territories

(4) In the exercise of the jurisdiction of a Court of Session conferred on him by this notification the First Assistant to the Resident may take cognizance of any offence as a Court of original criminal jurisdiction without the accused person being committed to him by a Magistrate, and shall, when so taking cognizance of any offence, follow the procedure laid down by the Code of Criminal Procedure for the trial of warrant cases by Magistrates

(5) This notification applies to all proceedings except proceedings against European British subjects or persons jointly charged with European British subjects, and it applies to proceedings which may be pending at the date of this notification if they have been instituted and are being conducted in conformity with the provisions herein contained

(6) Nothing in this notification shall be deemed to extend to any cantonment or to the Hyderabad Residency Bazaars, or to any railway lands situate within the said territories.—*Gazette of India*, 1885, *May* 23*rd*, *Part I*, p 304.

The following sections of Act XXI of 1879 are important —

11 When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

Arrest and removal of persons other than European British subjects escaping into British India.

if such Political Agent thinks that the offence is one which ought to be inquired into in such State

And if the act said to have been done would, if done in British India have constituted an offence against any of the sections of the Indian Penal Code mentioned in the Schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the *Gazette of India*.

12 Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant

Direction and execution of warrant

13 Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor General in Council, or by the Government of the Presidency of Fort St George in Council, or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of His Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial

14. Whenever a requisition is made to the Governor-General in Council or any Local Government by or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

Requisitions for extradition by the executive of any part of British dominions or Foreign Power

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of s. 10 shall apply to inquiries held under this section. (See s. 189, *post*, of the Code.)

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provision of section 11, issue a warrant for the arrest of such person, or that the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Magistrate may, in certain cases, issue warrant for arrest of person accused of having committed an offence out of British India

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

Magistrate to inform Political Agent or Local Government

With reference to the provisions of s. 13 of Act XXI of 1879, the Governor General in Council was pleased to direct that, for offences committed in any of the following States,—*viz.*, Patiala, Jind, Nabha, Maler Kotla, Kalsia, Dujana, Pataudi and Loharu, Bahawalpur, Chamba, Faridkot Mandi, Suket, Sirmur (Naha), Kahlur (Bilaspur), Baghahr, Nalagarh, Keonthal, Baghal, Baghat, Jubbal, Kumharsain, Bhajji, Mailog, Balsan Dhami, Kuthar, Kumhlar, Mangal, Beja, Darkuti, Taroch, Sangri, the persons accused shall be handed over by the Political Agent concerned to the Courts of the State for trial. But this direction was subject to the instructions contained in the notifications published in the *Gazette of India* No. 87J., dated the 16th August 1876, and to the further condition that, should there be, in any particular instance, special reasons for his so doing, the Political Agent might dispose of the case himself. Letter dated Simla, 13th August 1885, Foreign Secretary to Government of Punjab.—*Punjab Rec., Circular Or.*, p. 28.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Power to direct copies of depositions and exhibits to be received in evidence

This re enacts s. 10 of the Foreign Jurisdiction and Extradition Act, XXI of 1879, which section is repealed by this Act.—*Sched. I, infra.*

As to the issue of Commissions and the Courts by which Commissions may be issued, see s. 503, *infra.*

190. In sections 188 and 189 the expression 'Political Agent' means and includes—

'Political Agent' defined

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign

Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

This section repeats the definition of 'Political Agent' to be found in s. 3 of the Foreign Jurisdiction and Extradition Act, XXI of 1879. See Act III of 1891, s. 8.

B.—Conditions requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, *or* [Act XII of 1891, Sched. II] Subdivisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence ;

(*b*) upon a Police report of such fact ;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate, subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

["When a Magistrate takes cognizance of an offence under clause (*c*), the accused, or when there are several persons accused, any one of them shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session."—Act III of 1884, s. 2.]

See Act X of 1872, ss. 23, 25, 27, and 140, cls. (*a*), (*b*), (*c*), and (*d*) ; s. 141, para. 1 ; s. 142, para. 1 ; and Act IV of 1877, ss. 25, 28, and 46, the provisions of which are embodied in this section.

The clause added by Act III of 1884 is important. A Magistrate who has taken cognizance of an offence under clause (*c*) cannot, on an application being made, refuse to transfer or commit.—*Emp.* v. *Hawthorne*, I. L. R. 13 All. 345. If he refuse to accede to the application and tries the case himself he acts without jurisdiction.—*Ibid.*

The provision in cl. (*b*) of s. 140 of Act X of 1872, that a Police information or report should be regarded as a complaint in non-cognizable cases, has been omitted in this section. The sentence in cl. (*c*) of the same section that "any person acquainted with the facts of a case may make a complaint" has also been omitted. But as a general rule any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he is not interested or affected by the offence.—*In re Gonesh Narayan Sathe*, I. L. R. 13 Bom. 600. Sections 198 and 199 are statutory exceptions to this rule.

By s. 37, *supra*. In addition to his ordinary powers, any Subdivisional Magistrate, or any Magistrate of the first, second, or third class, may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth Schedule as powers with which he may be invested by the Local Government or the District Magistrate.

"Complaint" means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code ; that some person, whether known, or unknown, has committed an offence, but does not include the report of a Police-officer.—*S.* 4 (*d*) *supra*. See note to s. 195, *post*, and also note to s. 198, *post*, under heading "*Complaint*."

If any Magistrate, not empowered by law, erroneously, in good faith, takes cognizance of an offence under cl. (*a*) or (*b*) of this section, his proceedings shall not be set aside merely on the ground of his not being so empowered.—*Ss.* 529 (*e*) and 530, *infra*.

In cases of contempts of lawful authority, complaint may be made by the public servant concerned, or by some public servant to whom he is subordinate.—*S.* 195, *post*. In case of certain offences against public justice committed in any Court, and in case of certain offences relating to documents given in evidence in any Court, complaint may be made by such Court or by some other Court to which such Court is subordinate.—*Ibid.*

Under s. 196, a Court cannot take cognizance of certain offences against the State or punishable under s. 294A (as to keeping of lotteries) of the Penal Code, except on complaint made by, or order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in that behalf.

Offences under Chaps. XIX (criminal breach of contracts of service), or XXI (of defamation), or ss. 493–496 of the Penal Code can only be dealt with on complaint by some person aggrieved (s. 198, *post*) ; and offences under ss. 497, 498 (adultery, etc.) can only be dealt with upon complaint

made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when the offence was committed—*s.* 199, *post.*

Police Report.—A person having laid an information before the Police, the Police reported the case as false. The informant then appeared before the Magistrate asking that his case might be investigated and his witnesses summoned, but this application was refused, and the Magistrate after perusing the Police report passed an order directing him to be prosecuted under s. 211 of the Penal Code. The High Court held that the application to the Magistrate was a "complaint" within the meaning of s. 191.—*Emp. v. Sham Lall*, I. L. R. (F. B.) 14 Cal. 707. In that case it was pointed out that although the Magistrate was at liberty to take cognizance of the offence (under s. 211 of the Penal Code) brought to his notice by the Police report which afforded ground for a suspicion that the offence had been committed, yet as a matter of sound judicial discretion he ought not to have proceeded to direct the person suspected to be tried until some person aggrieved had complained, or until it was clear that the original charge had been either heard and dismissed or abandoned.—*Emp.* v. *Sham Lall*, I. L. R. (F. B.) 14 Cal. 707.

As to Police reports, see s. 173, *supra.*

The use of the term "may take cognizance of any offence" does not make it optional with a Magistrate to hear a complainant," but refers rather to the action of the Magistrate in taking cognizance of an offence in either of the specified courses in which the facts constituting the offence may be brought to his notice. He is bound to examine the complainant, and then can either issue summons to the accused, or order an inquiry under s. 202, or dismiss the complaint under s. 203.—*Umer Ali* v. *Jaffer Ali*, I. L. R. 13 Cal. 334.

Clause (c) of this section would apply only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint, being intended for the purpose of enabling a Magistrate to take care that justice may be vindicated notwitstanding that the persons aggrieved are unwilling or unable to prosecute. See *In the matter of Surendra Nath Roy*, 5 B. L. R. 274: (S. C.) 13 W. R. Cr. 27. Where sanction had been given by a Deputy Magistrate to prosecute a person for bringing a false charge, and such sanction was not proceeded with, it was held, under s. 142 of Act X of 1872, that it was open to the District Magistrate under that section to take up the case without a complaint.—*Emp.* v. *Nipcha*, I. L. R. 4 Cal. 712. See also *Queen* v. *Doorga Nath Roy*, 8 W. R. Cr. 9.

An accused person having been discharged under s. 215 of the Code of 1872, the District Magistrate, after calling for the proceedings, considered that the discharge had been improper, and professing to act under s. 142 of the same Code (corresponding with this section), referred the matter for re-trial by another Magistrate. The accused was convicted, but the conviction was annulled by the High Court.—*Emp.* v. *Gowdapa bin Venkayowda*, I. L. R. 2 Bom. 534. But see *In re Ramlal Mazumdar*, 6 B. L. R. Appx. 67: (S. C.) 14 W. R. Cr. 65: *Queen* v. *Tilku Goala*, 8 W. R. Cr. 61.

"*Knowledge or Suspicion.*"—It is at least doubtful whether a Magistrate, who is of opinion that a person has been improperly discharged by a Magistrate subordinate to him, may not, under this section, take cognizance of the offence which he may consider or suspect to have been committed. See *In re Mohesh Mistre*, I. L. R. 1 Cal. 282, where the High Court of Calcutta expressed their dissent from the case of *Sydya bin Satya*, quoted in Prinsep's Criminal Procedure Code, 5th Edition, p. 209. See also Chap. XXXII, *infra.* Under this section, as now altered by Act III of 1884, the accused would be entitled to require the case to be transferred to another Magistrate or committed to the Court of Session.

Belief founded on private or anonymous information is not 'knowledge' within the meaning of this section.—*In re Mohesh Chunder Banerjee*, 4 B. L. R. Appx. 1.

A Magistrate taking a complaint and issuing a summons thereon, acts not ministerially but judicially.—*Reg.* v. *Sadashivappa Pandurangappa*, 5 Bom. H. C. R. Cr. 20.

It is competent to a Magistrate to receive and take action on petitions relating to criminal charges when transmitted to him by post. Whether a Magistrate should do so or not is, in each particular case, a matter within the Magistrate's discretion.—*Mad. H. C. Pro.*, 20*th September* 1879; *Weir*, p. 25.

Who may Complain.—As a general rule any person having knowledge of the commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. With the exception of the provisions in ss. 195 and 198 of the Code there is nothing in the Code shewing an intention to confine prosecutions to the persons directly injured. *In re Ganesh Narayan Sathe*, I. L. R. 13 Bom. 600.

Where a Revenue Officer sent a *yadast* to a third class Magistrate charging a certain person with having disobeyed a summons issued by him it was held that the *yadast* amounted to a complaint and that a conviction under s. 174 of the Penal Code was not illegal, although the complainant was not examined under s. 200 of the Code of Criminal Procedure—*Emp.* v. *Monu*, I. L. R. 11 Mad. 443.

In the Punjab all senior officers at head-quarter stations under the Magistrate of the district, who were Magistrates of the first class, were, under s. 142 of Act X of 1872, invested with "power to entertain cases without complaint" when the Magistrate of the district was absent from head-quarters.—*Punjab Gazette*, 1873, p. 75. In that province, also, Magistrates of the first class have power, subject to the general control of the Magistrate of the district, to entertain cases without complaint.—*Punjab Gazette*, 1878, Part I, p. 361.

Transfer of cases by Magistrates.

192. Any District Magistrate or Subdivisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Under s. 17, *supra*, all Magistrates appointed under ss. 8, 12, 13, and 14, and all Benches of Magistrates constituted under s. 15, are subordinate to the District Magistrate: and every Magistrate (other than a Subdivisional Magistrate) and every Bench exercising powers in a subdivision is subordinate to the Subdivisional Magistrate, subject, however, to the control of the District Magistrate.

If any Magistrate, not empowered by law, erroneously, in good faith, transfers a case under this section, his proceedings will not be set aside merely on the ground of his not being so empowered.—*S. 529 (f), infra.*

'Inquiry' does not mean 'preliminary inquiry.'—*Pra., 23rd March* 1869; 4 *Mad. H. C. R., Appx. xl.*

Notice of any transfer ought to be given to the parties. See *Omrao Singh* v. *Fakir Chand*, I. L. R. 3 All. 749: *Teacotta Shekdar* v. *Ameer Mujee*, 10 C. L. R. 239: (S. C.) I. L. R. 8 Cal. 393.

This section confers no authority on one Subordinate Magistrate to refer to another Subordinate Magistrate a case referred to him for disposal.—*Mad. H. C. Pro., 15th June* 1874; *Weir*, p. 32: (*S. C.*) 7 *Mad. H. C. R., Appx. xxxiii.*

A Magistrate ought not to act judicially in cases where there is no necessity for his doing so, when he may have discovered the offence and instituted the prosecution, or was one of the witnesses for the prosecution.—*Reg.* v. *Bholanath Sen*, I. L. R. 2 Cal. 23. In such cases it is his duty to transfer the matter to some other Magistrate. Under s. 555, *post*, no Judge or Magistrate shall, except with the permission of the Court to which an appeal lies, try or commit for trial any case in which he is personally interested.

When once a case has been made over by a Magistrate to the Deputy Magistrate for trial, the jurisdiction of the Magistrate to do anything more in the matter has ceased, so long as the transfer to the Deputy Magistrate is in existence. A Magistrate who has made a transfer and wishes to take further steps in the matter, must formally withdraw the case from the hands of the Deputy Magistrate.—*Shanto Tewari* v. *Bellilios*, 3 B. L. R. Appx. 151. This he may do under section 528, *infra*, which provides, that any District Magistrate or Subdivisional Magistrate may withdraw any case from, or recall any case which he had made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

In Bengal, powers under s. 41 of Act X of 1872 were only conferred on special applications for special reasons shown. In a Resolution, dated the 1st January 1873, the reasons were thus stated: "The Lieutenant-Governor has deliberately not given power, under s. 44, of transferring cases taken up on complaint, because he thinks there has been hitherto far too great disposition to hand parties about from one officer to another. No doubt, it is well that complaints should be looked into by competent officers before they are entertained; but, on the other hand, His Honour is much inclined to think that when all the petitions are taken by one officer, he does not sift them properly, and it seems to him that when a complaint is taken by one officer and handed over to another and another, the responsibility for due sifting in the first instance is lost, and cannot be fixed. For the present, then, he thinks it is better that Magistrates of districts should exercise the power of determining what classes of cases each officer may hear within certain local limits, and let these officers take the petitions themselves. Under the distribution of work above suggested, it would be most desirable that the proposition several times made should be carried out,—namely, that at large stations, one Court should sit regularly as the Police Court, and take up at once ordinary Police cases there sent in by the Police."—*Calcutta Gazette*, 1873, p. 63.

All Magistrates of the first class in the Punjab and Madras have power to make over cases taken upon complaint, &c., to a Subordinate Magistrate.—*Punjab Gazette*, 1879, Part I, p. 680; *Madras Gazette*, 1873, p. 717.

Complaints referred by Subordinate Magistrates under this section and the above notification must always be sent by post or by a messenger of the Court, after being endorsed with the date of presentation and an order of reference specifying the number of days within which the complainant must appear to prosecute; and at the same time a memorandum must be given to the person presenting the complaint, informing him to what Magistrate his complaint has been referred, and of the time within which he must appear before such Magistrate to prosecute.—*Punjab Gazette*, 1879, Part III, p. 527.

Cognizance of offences by Courts of Session

193. Except as otherwise expressly provided by this Code, or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Cases to be tried by Additional and Joint Sessions Judges;

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

by Assistant Sessions Judges.

The object of restricting a Sessions Court from taking cognizance of any offence (except as specially provided, *e.g.*, by ss. 480, 481, 477, and 478), unless the accused has been committed by a Magistrate, is to secure to the prisoner a preliminary inquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him, and enables him to make his defence.—*Mutirakal* v. *Queen*, I. L. R. 3 Mad. 351.

Upper Burmah.—See the provisions of Reg. V of 1892, Sched. II, as to Courts of Session in Upper Burmah.

Section 351, *post*, provides that "any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination for any offence of which such Court can take cognizance, and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned. When the detention takes place in the course of an inquiry under Chap. XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard."

That section would apparently empower a Court of Session to proceed against any person appearing to be an offender attending the Court. This section (193) provides that, "except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf." The corresponding section (231) of Act X of 1872 did not contain any saving clause, and Courts of Sessions could not, therefore, proceed under s. 104 of that Act (corresponding with s. 351 of the present Code).

The fact of a commitment being made is sufficient to enable the Sessions Judge to proceed with the trial. It lies on the party impugning the correctness of the proceedings to show that there was no jurisdiction.—*Reg.* v. *Komaroombee Sikdar*, 13 W. R. Cr. 17: *Reg.* v. *Ranchoddas Nathubhai*, 4 Bom. H. C. R. Cr. 35. See Evidence Act, s. 114, cl. (*e*).

By s. 532, *infra*, if any Magistrate or other authority purporting to exercise powers duly conferred, but not being so conferred, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been prejudiced unless objection was made on behalf either of the accused or of the prosecution, to the jurisdiction of such Magistrate or other authority, during the inquiry and before the order of commitment. If such Court considers that the accused may be prejudiced, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

Applications under Chap. XXXII (of reference and revision) cannot be referred to a Joint Sessions Judge under this section, so as to make it competent to a Joint Sessions Judge to dispose of them, a Joint Sessions Judge being strictly precluded from exercising any of the powers under Chap. XXXII, and the second clause of this section contemplating only cases for trial.—*Reference by Sessions Judge of Surat*, I. L. R. 9 Bom. 362. See *In re Musa Asmal*, I. L. R. 9 Bom. 164.

Absence of commitment is a defect in substance and not of form, and is therefore not covered by s. 537, *post*.—*Sharma* v. *Emp.*, Punjab Rec., 1884, p. 92.

Under s. 477, *infra*, a Sessions Court may charge a person for any offence referred to in s. 195, *infra*, and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit or admit to bail and try such person upon its own charge. Under s. 478, Civil and Revenue Courts have powers to complete investigations into offences committed before them or brought to their notice in the course of a judicial proceeding, and to commit to the High Court or Sessions Court.

Sections 480 and 485, *infra*, further empower the Sessions Court to deal with certain cases of contempt, and to imprison a witness refusing to answer questions or to produce documents in his possession or power.

Section 206, *infra*, provides that any Presidency Magistrate, District Magistrate, Subdivisional Magistrate, Magistrate of the first class, or any Magistrate empowered in that behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

Section 226, *infra*, provides that where any person is committed for trial without a charge or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules in this Code as to the form of charges.

See Chap. XXXIII as to criminal proceedings against Europeans and Americans.

As to offences which a Sessions Court may try, see s. 28, *supra*.

In Bengal, the following instructions as to fixing Sessions have been issued :—

(*a*) In the first week in December in each year the Sessions Judge shall fix the number of sessions to be held during the year following, and the dates on which respectively they are to begin, the number varying with the estimated or average number of trials, and not being less than six or

more than ten in each year, except in outlying districts, where ordinarily the number should not be less than four. The arrangements made are to be immediately reported to the High Court for approval, but may be carried out, unless the disapproval of the Court be communicated.

(*b*) The Magistrate of each district shall obtain from all the Subordinate Magistrates, who exercise the power of committing to the Sessions, the particulars of all cases committed by them, and shall prepare and submit to the Sessions Judge two days before the commencement of each session a calendar of all such cases in the following form. This calendar shall be the basis of the Sessions Judge's return to the High Court.

(*Form of District Magistrate's Calendar.*)

Calendar of Accused Persons for trial before the Court of Session.

Session of 18

Number of case.	Committing officer.	Number and name of accused.	Charges, and under what law.	Date of offence.	Date of apprehension or appearance to summons.	Date of commitment.	In jail or on bail.	Finding and sentence or other order of the Court of Session as regards each prisoner.
1	2	3	4	5	6	7	8	9

—*Cal. H. C. C. O., No. 5 of 14th October* 1879; *Wilkins*, p. 23.

Punjab:—As to commitment and trial of sessions cases, see the rules in force in the Punjab.—*Smyth*, pp. 93—100.

In Bombay, the following rules are in force:—The Criminal Sessions shall commence in all Sessions Divisions on the first day in each month, except in cases where some other special provision shall have been made by the High Court. Whenever the day fixed for the commencement of the Criminal Sessions shall be a close holiday, the Sessions shall begin on the next Court-day. Sessions Judges should give notice to Magistrates up to what time they will receive cases and prisoners for trial at each Session.—*Bombay Gazette*, 1879, pp. 471, 475.

The following circular orders were issued to Sessions Judges, Joint Sessions Judges, and District Magistrates in the Presidency of Bombay:—

I am directed to inform you that, after further correspondence with Government, and with a view to prevent the unnecessary detention from their homes of witnesses in sessions cases, the Hon'ble the Chief Justice and Judges have been pleased to direct that the rules embodied in the High Court's letter, No. 953 of the 7th July 1880, should be permanently observed in regard to cases committed for trial during the monsoon months of this or future years.

2. With regard to cases committed during the fair season, their Lordships direct that the practice of holding fixed sessions at the prescribed times shall be adhered to, but that the Sessions Judge may, at his discretion, hold a special sessions (reporting the same to the High Court) for the trial of any case in which he may be of opinion, after consultation with the committing Magistrate, that an early trial is desirable and may be held without prejudice to the accused person.

3. Their Lordships further desire, that whenever, in cases not provided for in para. 2 of Circular No. 953 of 1880, a committing Magistrate is in telegraphic communication with the Sessions Judge, or is otherwise able to obtain a reply from him within twenty-four hours from the time when a case is ready for commitment, he shall obtain from the Sessions Judge an order fixing the trial for a particular day of the sessions, and shall make the committal accordingly; and when the committing Magistrate is too distant for such speedy communication with the Sessions Judge, he shall commit for the first day of the sessions, unless the Sessions Judge shall by general order intimate his readiness to receive cases up to a later date. It is further directed, whenever a Magistrate commits more than one case for the same sessions, he shall, in the absence of any special days having been fixed for their trial, commit them at intervals of two days apart,—*e.g.*, the first case for the first day, the second for the third day, the third for the fifth day, and so on.—*Bombay H. C. O., No. 539 of* 1881.

In compliance with the wishes of His Excellency the Governor in Council, the Hon'ble the Chief Justice and Judges are pleased to direct that a further experiment be made during this monsoon of holding frequent sessions until the end of October.

2. When a Magistrate, who is at or near the Huzur, commits a case for trial, he should forthwith send the record and proceedings with note of the additional witnesses, if any, required by the accused to the Sessions Judge or Joint Sessions Judge, who will be responsible for fixing without delay the earliest date on which the case should be tried with due but comparative regard to the convenience of persons concerned in other cases, criminal or civil, before the Court. This date should be communicated to the Magistrate in order that the witnesses may be bound over to appear.

3. When fixing the date for trial, the Judge should take into consideration the circumstances of the case. After looking at the papers, he should estimate how long the trial is likely to last. Sometimes, when witnesses are numerous and have come from a distance, it will be right for him to displace other business in order that a criminal case may be heard immediately, but this will not always be the case.

The convenience of witnesses may sometimes be best consulted by giving them time to go back to their homes, if not very distant, before the trial comes on.

4. When the committing Magistrate is not near the Hussur, he should commit the case for trial at a sessions to begin on the first Monday of the month according to the usual practice, giving the Sessions Judge or Joint Sessions Judge immediate notice.

5. To obviate the delay which would arise from a reference of cases by the Sessions Judge of Belgaum to the Joint Sessions Judge at Kaladgi, the Government will be requested to issue a notification under s. 17 of the Criminal Procedure Code, directing the Joint Sessions Judge to try all cases which may be committed to him by Magistrates in the Kaladgi portion of the Belgaum Sessions Division during the months of July, August, September, and October; and during these months the said Magistrates should make committals to the Joint Sessions Judge.

6. His Excellency the Governor in Council will also be requested to invest the District Magistrate of Kolaba with the powers of a Joint Sessions Judge, and to direct him to try all cases that may be committed to him for trial by the Magistrates in the Kolaba portion of the Thana Sessions Division during the months of July, August, September, and October; and during these months the said Magistrates should make committals to the Joint Sessions Judge.

7. As regards cases committed for trial by Magistrates in the Broach, Kaira, Nasik, and Sholapur portions of the Surat, Ahmedabad, Thana, and Poona Sessions Divisions, respectively, such cases should be committed for trial at Surat, Ahmedabad, Thana, and Poona, respectively, till the end of October. Magistrates at or near the stations of Broach, Kaira, Nasik, and Sholapur should act under the rules laid down in paras. 2 and 3 of this order.—*Bombay H. C. C. O., No.* 953 *of* 1880.

Cognizance of offences by High Court.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the Twenty-fourth and Twenty-fifth of Victoria, Chapter 104.

See ss. 22—29 of the Letters Patent for Bengal, Madras, and Bombay respectively; ss. 15—22 of the Letters Patent for the North-Western Provinces.

Statute 24 and 25 Vic., Cap. 104, is the Charter Act, 1865.

The whole of Act X of 1875 (the High Courts' Criminal Procedure Act) has been repealed by the present Code, with the exception of s. 144, and so much of s. 146 as relates to informations. These sections, which are important, are as follows:—

144. The Advocate-General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer.

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

146. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate-General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

195. No Court shall take cognizance—

Prosecution for contempts of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

(*c*) of any offence described in section 463, or punishable under sections 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court other than a Court of Small Causes shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

Under the former Code it was provided that 'no complaint' of any offence mentioned in the corresponding section should be entertained except with the sanction therein provided. Under this section it is provided that *no Court* shall 'take cognizance' of any of the offences referred to except as provided.

The section deals with the *previous* sanction, and accordingly it has been held that sanction can only be granted before, and not after, the commencement of the prosecution—*Emp.* v. *Dala Jiva*, I. L. R. 10 Bom. 190.

Under s. 537, no finding, sentence, or order can be reversed or altered in appeal or revision on the ground that sanction required by this section has not been given, unless there has been a failure of justice. See *In re Kally Mohun Mookerjee*, 13 C. L. R. 47. Objections to a Court's jurisdiction on the ground of want of sanction should be taken at the trial.—*Pro.*, 7 *Mad. H. C. R.* 58; *Weir*, p. 20.

Sections 172 to 188 (inclusive) of the Indian Penal Code deal with contempts of the lawful authority of public servants.

Clause (*a*).—There is a sufficient compliance with the provisions of cl. (*a*) when the prosecution is instituted by an inferior ministerial officer under the sanction or the authority of his official superior.—*Reg.* v. *Ram Golam Sing*, 11 W. R. Cr. 22: *Dukhoo Pein* v. *Chundro Kant Chowdry*, 3 W. R. Cr. 68, or if the complaint is made directly by the public servant mentioned in the section.—*Poonit Singh* v. *Madho Bhot*, I. L. R. 13 Cal. 270.

A prosecution may be instituted by a private person under s. 182 of the Penal Code provided he first obtains the sanction of the public officer to whom the false information was given.—*Emp.* v. *Jugal Kishore*, I. L. R. 8 All. 382 (overruling *Emp.* v. *Radha Kishan*, I. L. R. 5 All. 36) *Poonit Singh* v. *Madho Bhot*, I. L. R. 13 Cal. 270.

Where a person was charged under s. 182 of the Indian Penal Code with giving false information in which he mentioned two persons as being in possession of certain stolen property, it was held that he could be charged with having made one false statement only, although it implicated two persons.—*Poonit Singh* v. *Madho Bhot*, I. L. R. 13 Cal. 270.

Clause (*b*) of this section corresponds with s 468 of Act X of 1872 and s. 41 of Act IV of 1877. The sections of the Penal Code referred to in this clause are contained in Chap. XI, which deals with 'false evidence and offences against public justice.' The section distinguishes between a sanction granted by the Court and a complaint made by the Court itself. A superior Court may revoke the sanction granted in the former case, but it has no power to set aside a complaint duly made by a subordinate Court.—*Emp.* v. *Rachappa*, I. L. R. 13 Bom. 109: *Emp.* v. *Narakka*, I. L. R. 13 Mad. 144. See *Ishri Prosad* v. *Sham Lall*, I. L. R. 7 All. 871: *Reg.* v. *Baijoo Lall*, I. L. R. 1 Cal. 450: *Ajan Chunder Roy* v. *Protap Chunder Doss*, I. L. R. 7 Cal. 208.

Object of Sanction.—The object of the sanction required by this section is to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the evidence was given, or on the part of a Court to which such Court is subordinate.—*Reg.* v. *Mahomed*

Hussein, 16 W. R, Cr. 37. The finding, sentence, or order, however, as already stated, of a Court of competent jurisdiction will not be reversed or altered on appeal or revision on account of the want of sanction required by this section, unless there has been a failure of justice.—*S.* 537, *infra*.

The Courts which have jurisdiction to grant a sanction to proceedings, it was held, under s. 408 of Act X of 1872, are the Court before which the offence was alleged to have been committed and the Courts to which such Court is subordinate.—*In re Kasi Chunder Mozumdar*, I. L. R. 6 Cal. 440: (S. C.) 7 C. L. R. 330. But, in cases of alleged perjury, an application for sanction to institute a prosecution on a charge of perjury should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed.—*In re Rajah of Venkatageri*, 6 Mad. H. C. R. 92; see *Weir*, p. 28.

A prosecution of a charge under s. 211 of the Indian Penal Code should not be sanctioned as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution, and there is a strong *primâ facie* case against the accused.—*In re Gouri Sahai*, I. L. R. 6 All. 114, *per* OLDFIELD, J.: *Kedarnath Das* v. *Mohesh Chunder Chuckerbutty*, I. L. R. 16 Cal. 661: *Imam Baksh*, Punj. Rec., 1889, p. 133.

Although, before granting sanction to prosecute, a Court is bound to satisfy itself that an offence has been committed, it is not bound to hold an inquiry as to all the persons who may be implicated in such offence.—*In re Govindan Nayan* and other Petitioners, I. L. R. 7 Mad. 224. See 9 W. R. Cr. 3. In the Madras case there was a charge of wrongful confinement and extortion made by J against certain persons. The Magistrate held an inquiry, and having arrived at the conclusion that the charge was false, recorded proceedings to the effect that "the complainant should be prosecuted for false complaint and the individuals mentioned in the Police report (the petitioners) should be prosecuted for abetment of the false complaint." There was no evidence in the record to show that the petitioners had any connection with the charge brought by J, though there were certain loose statements against them in the Police report. HUTCHINS, J., said:—"Before granting a sanction under s. 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed. I do not see that it is bound to hold an inquiry as to all the persons who may be implicated in such offence. On the contrary, the section expressly provides that the sanction may be in general terms, and need not name the accused person or persons at all. That being so, it would seem that the petitioners might have been included in the prosecution, even if they were not named in the order or sanction."

Where an offence of the nature specified in this section is committed before a Court, the Court must in every case hold an investigation to see if there is a *primâ facie* case. It may, after this, send the cases to a Magistrate for regular 'preliminary inquiry.' But if it proceeds under s. 476 to commit direct to the Court of Session, where it has power to do so, it must itself hold a complete inquiry, framing charges and taking depositions. See *Reg.* v. *Radha Nauth Mozoomdar*, 5 Wyn. Cr. Rul. 19.

Section 476 is as follows.—"When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in s. 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial. Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under s. 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate."

The object of the preliminary inquiry is, that the Court may be satisfied that a specific charge coming under the sections mentioned in it ought to be preferred against the accused, and after being so satisfied, it must either commit the case (see s. 487, *infra*), or send it to the Magistrate for inquiry whether a committal should be made or not. See *Kali Prosunno Baychee, Petitioner*, 23 W. R. Cr. 39. See also *Bhukteram* v. *Heera Kolita*, I. L. R. 5 Cal. 184, *per* AINSLIE, J., p. 187.

It is unnecessary that the preliminary inquiry contemplated by s. 476 should be conducted in the presence of the accused. All the Court making the inquiry has to do is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate—9 W. R. Cr. 3; but the Court ought to have direct evidence fixing the offence upon the person whom it is sought to charge either in the course of the preliminary inquiry referred to in the section or in the earlier proceedings out of which the inquiry rises. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that the person has been guilty of an offence.—*In re Khepu Nath Sikdar*, I. L. R. 16 Cal. 730.

Powers similar to those conferred on Civil and Criminal Courts alike by this section are conferred on Civil Courts by s. 643 of the Code of Civil Procedure (corresponding with ss. 16 and 19 of the repealed Act, XXIII of 1861). But neither that section nor the sections of the Act for which it was substituted direct the Court to hold any preliminary inquiry before sending a case under the section to a Magistrate for investigation. All that is required is that the Court shall be satisfied that there is sufficient ground for sending the case for investigation to the Magistrate. In the case of *Reg.* v. *Baijoo Lall*, I. L. R. 1 Cal. 450, MACPHERSON and MORRIS, JJ., quashed an order made, according to the return of the Judge who made it, under s. 16 of the repealed Act mentioned, without a preliminary inquiry having been made, on the ground that the law as to procedure in cases within that section was embodied in s. 471 of the Criminal Procedure Code of 1872 (476 of this Code), under which a preliminary inquiry was necessary. From the judgment it would appear, however, that the learned Judges treated the order as really made under the section of the Criminal Procedure Code.—See *Umbica Sundari Chowdhrani* v. *Ajitoollah Mondul*, 8 C. L. R. 148.

It is the Court before which, not the Judge before whom, the offence is alleged to have been committed that is to give the sanction. A change of incumbent does not alter the constitution of the Court.—*H. C. Pro.*, *12th November* 1872; *Weir*, p. 29.

A Police-constable taking down a statement under s. 161 is not a judge, nor is the place where he officiates, a Court. His sanction is therefore not necessary under s. 195, cl. (*b.*), to a prosecution under s. 193, for a false statement made to him.—*Emp.* v. *Ismal*, I. L. R. 11 Cal. 659.

Under s. 238, *post*, where a new charge has been added, or a charge has been altered so as to include an offence for the prosecution of which previous sanction is necessary, the case cannot be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as those in which the new or altered charge is founded. Accordingly when sanction is given to prosecute a person for a particular offence, the Magistrate may not, without a fresh sanction, frame a charge against the prisoner of having committed some other offence referred to in the section.—*Rajcoomar* v. *Kirthu Ojha*, 13 W. R. Cr. 67.

False Charges.—Under the Code of 1872, where a complaint has been made before a Magistrate, it was held that sanction for a prosecution under s. 211 of the Indian Penal Code without examining all the witnesses whom the person accused of making the false charge wishes to produce in Court, is illegal.—*In re Bipopi Bhagut*, 4 C. L. R. 134: *In re Russick Lall Mullick*, 7 C. L. R. 382: *Emp.* v. *Karimdad*, I. L. R. 6 Cal. 490: (8. C.) 7 C. L. R. 467: *Emp.* v. *Radha Kishan*, I. L. R. 5 All. 36: (see *Poomit Singh* v. *Madho Bhot*, I. L. R. 13 Cal. 270, and *Emp.* v. *Jugal Kishore*, I. L. R. 8 All. 382): *In re Sakhina Bibi*, 8 C. L. R. 387: (8. C.) I. L. R. 7 Cal. 87: *In re Chakrabarti Potti*, 8 C. L. R. 289: *Emp.* v. *Shibo Beharu*, I. L. R. 6 Cal 589: (8. C.) 8 C. L. R. 255. See *In re Gyan Chunder Roy* v. *Prolay Chunder Dass*, I. L. R. 7 Cal. 208: (8. C.) 8 C. L. R. 297: and *Syed Nizar Hossain* v. *Ramgolam Singh*, 25 W. R. Cr. 10. But see *In re Bhawani Prosad*, I. L. R. 4 All. 182. Now s. 253 provides, in warrant-cases, that if, upon taking all the evidence referred to in s. 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him; but that nothing in the section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. The proviso to that section is now, and it may be that, under the present Code, when a Magistrate considers a charge groundless, and discharges the accused without taking all the evidence offered by the complainant, a prosecution would lie under s. 211 of the Indian Penal Code. It would seem, however, that in such a case it would be necessary to hold a preliminary inquiry under s. 476. See *post*, *Emp.* v. *Bhawani Prosad*, I. L. R. 4 All. 182, and cases there cited.—See notes to ss. 200, 203, 253, and 476, *post*.

It is to be observed that cl. (b) has limited the protection of a preliminary sanction in respect of offences under s. 211 of the Penal Code to cases "where such offence is committed in, or in relation to, any proceeding in any Court." Accordingly where no complaint has been made before a Magistrate but a charge has been laid before the Police and that charge has been found upon a Police report to be false a Magistrate has jurisdiction under s. 191 of this Code to direct a prosecution under s. 211 of the Penal Code.—*Emp.* v. *Sham Lall*, I. L. R. 14 Cal. 707, where all the cases are referred to,—and in such cases, where no further proceedings have been taken, also, it would seem sanction is not necessary to enable the person aggrieved by the false charge to institute a prosecution under the same section of the Penal Code.—*Government of Bengal* v. *Gokool Chunder Chowdhry*, 24 W. R. Cr. 41: *Ram Ranjuar Bhanduri* v. *Madhab Chunder*, 25 W. R. Cr. 33: *Queen* v. *Gour Mohun Singh*, 10 W. R. Cr. 44: *Emp.* v. *Irad Ally*, I. L. R. 4 Cal. 869: (8. C.) *nom. Nusibunnissa Bibi* v. *Shaik Erad Ali*, 4 C. L. R. 413: *Emp.* v. *Abdul Hasan*, I. L. R. 1 All. 497: *Emp.* v. *Salik Roy*, I. L. R. 6 Cal. 582: (8. C.) 8 C. L. R. 255. See *Asrof Ali* v. *Emp.*, I. L. R. 5 Cal. 281.

Where a case was referred by the Magistrate to the Police for inquiry, the Police reported it false, and the Magistrate thereupon, under s. 195, directed a prosecution under s. 211 of the Penal Code for making a false charge. It was there held, that sanction ought not to have been granted until the complainants had been afforded an opportunity of proving their case.—*Emp.* v. *Ganga Ram*, I. L. R. 8 All. 38: see *Emp.* v. *Karimdad*, I. L. R. 6 Cal. 490.

In the case of *Emp.* v. *Sham Lall*, I. L. R. 14 Cal. 707 (F.B.), it was pointed out that the Magistrate ought not to take cognizance of an alleged offence under s. 211 of the Penal Code until the alleged offender had an opportunity of substantiating the original charge, and such original charge has been disposed of in the course of law.

Clause (c) corresponds with s. 469 of Act X of 1872 and s. 42 of Act IV of 1877.

Section 469 of Act X of 1872, it was held, referred, in cases of forgery, only to cases in which a supposed forged document had been put in evidence in some proceedings in a Civil or Criminal Court. In other cases of forgery, the Magistrate, it was said, had power, *proprio motu*, to make inquiries, but did not derive the power from that section.—*Reg.* v. *Ramdharry Singh*, 10 W. R. Cr. 5.—See *Eadara Virana* v. *Queen*, I. L. R. 3 Mad. 400.

It is to be observed that the offences mentioned in cl. (c) must be committed in respect of a document *given in evidence*; otherwise, apparently, sanction is not necessary. See *Sangili Vira* v. *Queen*, I. L. R. 6 Mad. 29.

It is undesirable, it was said, that the same Judge who has heard the evidence and expressed an opinion upon it in a civil case should also be the Judge to try a prisoner upon a charge arising out of the civil case supported by the same evidence; but a conviction is not necessarily bad for this reason.—*Queen* v. *Subal Chunder Gangooly*, 22 W. R. 16. But now see s. 487, *infra*.

The granting of a sanction under cl. (c) to a private person does not debar a Civil Court from proceeding under s. 478 of the Code: *Emp.* v. *Shankar*, I. L. R. 13 Bom. 384. It is in the discretion of the private person to proceed or not.—*In re Giridhai Mondul*, I. L. R. 8 Cal. 435, p. 439: (8. C.) 10 C. L. R. 46.

When a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery or of using as genuine a false document or of abetting forgery.—*Queen* v. *Mohesh Chunder Acharjee*, 6 W. R. Cr. 20.

The sanction required by this section is not to be given in any particular form of words. In the case of *Sheo Churn, Petitioner*, 2 Wym. Cr. Rul. 59, where a false charge was dismissed by the

Magistrate of the district, an order passed by him referring the complaint of the defendant made under s. 211 of the Indian Penal Code to a Deputy Magistrate for trial, was held to be a sufficient sanction for the prosecution of the case.

Although it is not legally imperative that the sanction to prosecute should be in writing, it is very desirable that such sanction or direction should be put in writing and attached to the record. —*Mad. H. C. Pro., 7th February* 1872 ; *Weir*, p. 20.

A Bombay High Court Circular directed that a formal sanction should be given under the seal of the Court and the signature of the presiding officer, and should be recorded in the proceedings in the trial, whether the Court before whom the offence is committed takes proceedings against the offender or not. The production of such an order under the seal of the Court and signature of the presiding officer is to be accepted as *primâ facie* evidence of the sanction.—*Bom. H. C. Cir.* 42.

Sanction was implied where the conviction, which was for non-attendance in obedience to a summons, was by the same Magistrate whose summons was treated with contempt.—*Reg.* v. *Ganubin Tatia Selar*, 5 Bom. H. C. R. Cr. 38.

The sanction accorded by a Civil Court, it was held under the old Code, in a case under s. 193 of the Indian Penal Code need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions given.—*Reg.* v. *Kudir Bux*, 11 W. R. Cr. 17.

Nature of Sanction.—The first part of the fourth paragraph which deals with the nature of the sanction corresponds with the first paragraph of s. 470. See *Ewan Chunder Dutt* v. *Prannauth Chowdhry*, Marsh. 270. The second part of the paragraph is new. It follows the decision in the case of *In re Balagi Sitaram*, 11 Bom. H. C. R. 34. See *Emp.* v. *Dala Jiva*, I. L. R. 10 Bom. 190. In the former case, the Court further expressed an opinion that it was desirable, if not necessary, that, in the sanction, the description of the offence intended to be prosecuted should be stated in general terms, although details might be omitted. See *Queen* v. *Ooma Moye Debea*, 13 W. R. Cr. 25. But the particular offence or offences for the prosecution of which sanction is given should be stated with precision.—*Ibid.*

A Magistrate making a commitment for giving false evidence must set out the precise words recorded as used by the accused, containing the statement which he undertakes to prove to be false, and not state the effect of those words : *Queen* v. *Soondur Mohooree*, 9 W. R. Cr. 25 ; *Queen* v. *Kartick Chunder Holdar*, 6 W. R. Cr. 58 : *Queen* v. *Boodhun Ahir*, 17 W. R. Cr. 32. If, however, the defect is not such as to mislead the accused, the High Court will not interfere.—*Queen* v. *Adhya Thakoor*, *ib.*, 33. In a case of forgery, it should be stated distinctly what the document is for which a prosecution is to be entertained, the particular act or acts of forgery ; and in a case of perjury, the particular words which constitute the perjury should be specified.—*In re Govind Chunder Ghose*, 10 W. R. Cr. 41.

The sanction ought to specify the section or sections under which the criminal proceedings are to be taken, as also, in a general way, the offence or offences to be charged, the date of commission, and the place where committed : *Imam Baksh*, Punj. Rec., 1889, p. 133.—*In re Parsotam Lall*, I. L. R. 6 All. 101, *per* STRAIGHT, J., who went on to say : "I think it well that judicial officers, in granting sanctions under s. 195 of the Criminal Procedure Code, should be clear and precise upon the matters I have indicated, in order that the Magistrates who have to entertain the prosecutions may accurately know the exact offence or offences in respect of which proceedings have been authorized." In cases of perjury the sanction should specify in substance the assignment of perjury and the sections under which proceedings are authorized.—*In re Har Dial* v. *Durga Prasad*, I. L. R. 6 All. 105.

It will be observed, from the cases quoted, that the tendency of the Courts is to hold that sanction granted under the section should be as precise as possible, especially in cases of perjury and forgery. The section provides that, where sanction has been given in respect of any offence referred to in the section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts. Thus, where sanction has been given to prosecute, under s. 182, for false information with intent to cause a public servant to use his lawful power to the injury of another person, the section would allow the Court taking cognizance of the case to frame a charge, under s. 211, of bringing a false charge.—See *Rajcoomar* v. *Kirtu Ojha*, 13 W. R. Cr. 67.

Where a charge has been made not requiring sanction, but a new charge requiring sanction is substituted or added, the Court must be guided by s. 230, *post*, which provides that, if the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.—See ss. 226 and 227 as to alteration of charges.

What amounts to Sanction.—Where a Subordinate Magistrate after trying a case sent the record to the District Magistrate with a suggestion that certain persons should be prosecuted under s. 211 of the Penal Code, it was held by the High Court that this did not constitute a sanction to prosecute. —*In re Khajra Nath Sakdar*, I. L. R. 16 Cal 730.

An instruction to a Magistrate of the District by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it, to prosecute a person for giving false evidence before it in such case, did not amount, it was held by PEARSON, J., to sanction to a prosecution within the meaning of s. 468 of Act X of 1872, that section contemplating a complaint or at least an application for sanction for a complaint—*Emp.* v. *Gobardhan Dass*, I. L. R. 3 All. 62. The High Court at Calcutta, however, decided otherwise in the case of *In re Jugul Mohinee Dassee*, 10 C. L. R. 4. In that case it was held, not only that it was not necessary that sanction to prosecute under s. 211 of the Penal Code should only be granted on an application by a private prosecutor, but that a District Magistrate was competent, of his own motion, to direct a prosecution, where a complaint had been entertained and found to be false by a Magistrate subordinate to him. See *In re Giridhari Mondal*, 0 C. L. R. 48 ; (S. C.) I. L. R. 8 Cal. 435 : *Ishri Prasad* v. *Sham Lal*, I. L. R. 7 All. (F. B.) 871.

In the case of *Jadunath Hazra* v. *Annoda Prosad Sircar*, 11 C. L. R. 53, a Moonsiff, upon an application for sanction to prosecute under s. 207 of the Indian Penal Code, made the following order on the petition : "If the petitioner thinks there is sufficient evidence against A, there is no objection to give the sanction asked for herein." The High Court held that this sanction was not sufficient. So, in the case of *Abdilakh Sing* v. *Khub Lall*, I. L. R. 10 Cal. 1100, which was overruled on another point by the Full Bench in the case of *In re Krishnanundo Das*, I. L. R. 12 Cal. (F. B.) 58, a sanction in the words—"sanction to prosecute is awarded"—was held to be clearly not a compliance with the law which requires that a sanction "shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed."

The sanction need not name the accused person. See *In re Govindan Nayan*, I. L. R. 7 Mad. 224, *per* HUTCHINS, J. (quoted *supra*).

If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear grounds for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such persons without any further inquiry than that which he has already held in his own Court.—*In re Mutty Laul Ghose*, I. L. R. 6 Cal. 308. See s. 470, *infra*.

The fifth paragraph of this section is based upon the second paragraph of s. 470 of Act X of 1872. See also Act X of 1875, s. 134, and Act IV of 1877, s. 43. By s. 470, however, it was provided that the sanction might "be given at any time," and these words, it was held, must be construed reasonably, and that "any time" meant a time which did not unduly prejudice the party to be prosecuted or put him in a worse position than he was before.—*Sestarana Sahoo* v. *Rat Baboo Sheregolam Sahoo*, 18 W. R. Cr. 62. Questions arose under Act X of 1872 as to whether a sanction granted after commitment was legal. See *Mohima Chunder Chuckerbutty*, 15 W. R. Cr. 45 : and *In re Golak Singh*, 3 B. L. R. Ap. Cr. 10. Such questions are now put at rest by this section, which provides that no Magistrate shall take cognizance of the offences mentioned except with *previous* sanction of a Court.

Complaint.—The words "except with the previous sanction or on the complaint of the public servant concerned" must be read in connection with s. 476, *post*, which was enacted with the object of avoiding the inconvenience which might be caused if a Moonsiff, Subordinate Judge or a Judge were obliged to appear before a Magistrate and make a complaint like an ordinary complainant in order to lay the foundation for a prosecution. The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strictest sense of the word is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.—*Ishri Prasad* v. *Sham Lal*, I. L. R. 7 All. (F. B.) 671, *per* PETHERAM, C. J., and STRAIGHT, J. In that case a Moonsiff made an order which he described as passed under s. 643 of the Civil Procedure Code (Act XIV of 1882), and in which he directed that certain persons, who had committed offences before him under ss. 193, 463, and 471 of the Penal Code, should be sent before the Magistrate, and that the Magistrate should inquire into the matter. The Full Bench held that the order, whether it was or was not a sanction, was a sufficient complaint within s. 195, and that the limitation period prescribed by that section was not applicable to the case. See *Queen* v. *Yendava Chandramma*, I. L. R. 7 Mad. 189.

Section 643 of the Civil Procedure Code is as follows :—"When in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in ss. 193, 196, 199, 200, 205, 206, 207, 208, 209, 210, 463, 471, 474, 475, 476, or 477, of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate. The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate. The Magistrate shall receive such charge, and proceed with it according to law."

As to what is a complaint, see notes to s. 191, *supra*.

Jurisdiction.—The discretion vested in a Civil Court of sanctioning a criminal charge of perjury is one that should be most carefully exercised.—*Queen* v. *Poosi Ram*, 6 W. R. Cr. 11.

As soon as it becomes apparent that a complaint is of an offence falling within this section, and that it is made without sanction, the Magistrate is not competent to entertain it.—*Pro.*, 16*th February* 1875 : 8 *Mad. H. C. R. Appx. ii* ; *Weir*, p. 30. The sanction must be given before and not after the commencement of the prosecution.—*Emp.* v. *Dala Jiva*, I. L. R. 10 Bom. 190.

In the case of *Barkatulla* v. *Benne*, I. L. R. 1 All. 17, it was held by a Full Bench at Allahabad, that when the Court, in which evidence in a case had been given, had, under s. 468 of the Criminal Procedure Code of s. 1872, sanctioned criminal proceedings, no superior Court had any right to question the propriety of that sanction. In Calcutta, also, it was held by a Full Bench, in the case of *In the matter of Ram Prosad Hazra*, B. L. R. Sup. 426 : (S. C.) 5 W. R. Mis. Rul. 24, that where, in the course of a suit, a Civil Court committed a party for trial or sanctioned criminal proceedings against him, on a charge of perjury or forgery, the High Court could not, as a Court of Revision, reverse such sanction or order, upon the ground that it was not warranted by the facts. See also *Gopal Mozumdar* v. *Hurro Soondari Hoistomee*, 10 W. R. Cr. 69. In the case of *Barkatulla* v. *Benne*, I. L. R. 1 All. (F. B.) 17, SPANKIE, J., was of opinion that where sanction had been withheld by the subordinate Court the superior Court might, by virtue of its superiority, grant sanction, but that it should be the practice of all superior Courts to refuse to entertain an application until it was shown that an application had been made to the subordinate Court, and by that Court sanction had been refused.

The power which, under the 6th paragraph of this section, a superior Court has to grant or revoke a sanction which has been refused or granted, may be exercised by an Appellate Court by way of revision—*Section* 439, *infra*. But where sanction has been refused by a subordinate Court,

the High Court will not exercise the discretion given to it by this section, unless it appears very clearly that there are strong grounds for granting the sanction. *Money Mohun Dey* v. *Doonath Mullick*, 22 W. R. Cr. 11. But it seems a Sessions Judge may order the committal of a person accused of giving false evidence after the discharge of such person by the Magistrate.—*Reg.* v. *Bhohisan Mahatoon*, W. R. Cr Sup. Vol. iii.

Sanctioning a prosecution is a judicial act, and the person to whose prejudice it is done must be previously heard, and a judgment formed upon legal evidence. In cases in which the Magistrate dismisses the original complaint upon a report from the Police, there is no legal evidence before him on which to form his judgment. In cases, however, in which the Magistrate examines the complainant and hears the evidence, acquits or discharges the accused, and then without notice to the complainant sanctions his prosecution for preferring a false charge, sanction cannot be said to be improperly given—*Emp.* v. *Shaikh Baari*, I. L. R. 10 Mad. 232. But where the attorney for a complainant stated that he was prepared to show cause against an application for sanction to prosecute him, it was held that the Magistrate did not exercise a proper discretion in granting sanction without giving him an opportunity of being heard.—*Kedarnath Dass* v. *Mohesh Chunder Chuckerbutty*, I. L. R. 10 Cal. 661.

Notice.—It was held by a Full Bench, overruling the case of *Abhilakh Singh* v. *Khub Lal*, I. L. R. 10 Cal. 1100, on that point, that no notice is necessary to the person against whom it is intended to proceed, before a Court, before which the alleged offence has been committed, can grant sanction to prosecute.—*In re Krishnanund Das*, I. L. R. 12 Cal. (F. B.) 58. Before, however, granting sanction, the Court is bound to satisfy itself that an offence has been committed: (*Kedarnath Dass* v. *Mohesh Chunder Chuckerbutty*, I. L. R. 10 Cal. 661), but it is not bound to hold an inquiry as to all the persons who may be implicated in such offence.—*In re Govindan Nayan*, I. L. R. 7 Mad. 224, for the section itself provides that the sanction need not name the accused.

On an application for sanction to prosecute, it was held under Act X of 1862, s. 468, in Madras that it is not competent to the Court to go beyond the record in determining whether or not sanction should be granted, where the record itself discloses no foundation for the charges.—*Sangili Vira Chinnatambiar* v. *Queen*, I. L. R. 6 Mad. 20, *per* INNES, Offg. C. J., and KERNAN, J. See *Abdul Khadar* v. *Meera Sahib*, I. L. R. 15 Mad. 224: see *In re Kali Chunder Mozumdar*, I. L. R. 6 Cal. 440: (S. C.) 7 C. L. R. 330: see *Shoshi Kumar Dey*, I. L. R. 19 Cal. 345. In the first case, the plaintiff, in a civil suit to set aside an order of demarcation under s 25 of the Madras Boundary Act, filed certain copies of settlement accounts. When the case came on, the clerk of the Collector's office was in attendance under a subpœna to produce the originals, which were alleged to be forged. No evidence was given of the forgery. The plaintiff's vakil retired from the case, and the suit was dismissed. Subsequently, the defendant's counsel applied for sanction to prosecute the plaintiff under s. 471 of the Indian Penal Code, and sanction was granted. The Madras High Court, however, held that, upon the record itself, there was no evidence giving rise *per se* to a suspicion of the offence charged, and set aside the order granting sanction. Under the present Code it is a question whether sanction would be necessary in such a case, as the documents were not put in evidence. See *Shoshi Kumar Dey*, I. L. R. 19 Cal. 345, dissenting from *In re Kali Chunder Mozumdar*, I. L. R. 6 Cal. 440 and *Sangili Vira* v. *Queen*, I. L. R. 6 Mad. 29.

The sanction should not be granted without a preliminary inquiry where such inquiry is necessary under s. 476 of the Code.—*Emp.* v. *Narotam Jhaa*, I. L. R. 6 All. 86. In the case of *In re Parsotam Lal*, I. L. R. 6 All. 101, where a Moonsiff gave sanction to prosecute for forgery, where the question whether a bond had been executed or not was, after suit brought, by consent of the parties, referred to arbitration, and the arbitrator decided that the bond was a forgery, it was held by STRAIGHT, J., that the Moonsiff, not having determined the question of forgery himself, ought to have held a preliminary inquiry to satisfy himself that there were materials to justify a prosecution. It will be observed that in this case the document alleged to be forged was not actually given in evidence in the proceedings before the Court, though it was given in evidence in a proceeding before the arbitrator directed by the Court.

Subordination of Magistrates.—The penultimate paragraph of this section seems to have been suggested [See *In re Anant Ramchandra*, I. L. R. 11 Bom. 438] by the remarks of MELVILL, J., in the case of *Emp.* v. *Pathamukh Pal*, I. L. R. 2 Bom. 384, where it was held by the Bombay High Court, that a Magistrate of the first class was subordinate to the Magistrate of the District, so that a sanction given by the latter to prosecute a person for intentionally giving false evidence before the former was legal and sufficient. "We should certainly have preferred," said MELVILL, J., in that case, "to hold that, for the purposes of ss. 468 and 469, a Magistrate of the first class is subordinate, not to the Magistrate of the District, but to the Court of Session. It is very essential that the Court of Session, either when sitting in appeal or when trying a case committed to it by a Magistrate of the first class, should have the power to sanction a prosecution for the offence of giving false evidence or of forgery committed in the Court of the Magistrate. . . . . But, in the absence of any express provision to that effect in the Code, it is impossible not to see that it would be difficult to hold that the Court of Session has such power in the face of the words of s. 37 (corresponding with s. 17, para. 4, *supra*)." See also *In re Gur Dayal*, I. L. R. 2 All. 205: and *In re Anant Ramchandra*, I. L. R. 11 Bom. 438.

It will be observed that, for the purposes of this section, it is now declared that every Court other than a Court of Small Causes shall be deemed to be subordinate only to the Court to which appeals ordinarily lie.

For the purpose of sanctioning a criminal prosecution, the Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involves more than Rs. 5,000, and an appeal lies direct to the High Court.—*Emp.* v. *Lakshman Sakharam*, I. L. R. 2 Bom. 481. In the case of *Queen* v. *Velayudam Pillai*, I. L. R. 6 Mad. 146, it was held in the Madras Presidency that a second class Magistrate of a taluok, not being the official superior of a Police Station-house Officer, could not sanction a prosecution under s. 182 of the Indian Penal Code for giving false information to the Station-house Officer.

In Allahabad it was held that the Court of the Collector, when granting sanction in respect of false evidence in the course of a trial of a rent-suit under Act XII of 1881, from the final decision in which there was no appeal to the Court of District Judge, was still to be deemed subordinate to it, and that the Court of the District Judge might be taken as the Court to which the decisions of the Collector ordinarily lie.—*Hari Prosad* v. *Debi Dial*, I. L. R. 10 All. 582.

Revocation.—A superior Court has no power to set aside a complaint made by a subordinate Court.—*Emp.* v. *Rachappa*, I. L. R. 13 Bom. 109: see *Emp.* v. *Narakka*, I. L. R. 13 Mad. 144. A District Court has jurisdiction to revoke or grant a sanction granted or refused by a Subordinate Judge's Court.—*Shakata* v. *Muthusami*, I. L. R. 7 Mad. 314. A Subdivisional Magistrate cannot sanction the prosecution of a witness for perjury in the Court of a Magistrate subordinate to him.—*Emp.* v. *Kuppu*, I. L. R. 7 Mad. 560.

Lapse.—A sanction does not lapse with the death, before complaint preferred, of the person to whom it was granted. *In re Thathayya*, I. L. R. 12 Mad. 47; but where such sanction is not proceeded with, it is open to the Magistrate to take up the case without complaint under s. 191 (*a*). —*Emp.* v. *Nipcha*, I. L. R. 4 Cal. 712. See *Sardar Jawala Singh*, Punj. Rec., 1887, p. 56.

Limitation.—It seems to have been considered that it is competent to a Court which has granted sanction to a prosecution to give a fresh sanction if the one previously granted has expired by effluxion of time.—*In re Gulab Singh* v. *Debi Prosad*, I. L. R. 6 All. 45. But where sanction has been granted, and has ceased after six months to be in force, fresh sanction ought not to be granted, assuming it can be granted at all, unless some explanation is given for the omission to commence proceedings under the first sanction within six months. See *Joydeo Singh* v. *Burihar Pershad Singh*, I. L. R. 11 Cal. 577. The limitation in the section means that the Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed in that time.—*In re Gulab Singh* v. *Debi Prosad*, I. L. R. 6 All. 45. There is no fixed period of limitation for making applications for sanction under s. 195.—*Emp.* v. *Ajudhia*, I. L. R. 10 All. 350.

In the case of *In re Gulab Singh* v. *Debi Prosad*, I. L. R. 6 All. 45, sanction had been obtained, but in consequence of the evidence of the complainant not being procurable, the Magistrate ordered "the case to be shelved for the present." It was held, on the complainant, after the six months had expired, applying that the proceedings might be re-opened, that it was not necessary that fresh sanction should be given.

"Court."—A Mamlatdar's Court instituted by Bom. Act III of 1876 is a Civil Court within the meaning of this section.—*In re Savanunta*, I. L. R. 5 Bom. 137: *Mahadaji* v. *Sonu*, 9 Bom. H. C. R. 240: and *Bai Jamna* v. *Bai Jadav*, I. L. R. 4 Bom. 168; and accordingly sanction is required in case of an offence mentioned in the section. See *Emp.* v. *Sahnath*, I. L. R. 2 All. 333.

A Collector acting in appraisement-proceedings under ss. 69 and 70 of the Bengal Tenancy Act,—*Raghoobuns Sahoy* v. *Kokil Singh*, I. L. R. 17 Cal. 872, and in Madras a village Moonsiff.—*Emp.* v. *Venkayya*, I. L. R. 11 Mad. 375, have been held to be within the meaning of the section.

A Sub-Registrar acting, it was held, under the Registration Act, 1877, is not a Court within the meaning of s. 195.—*Emp.* v. *Subba*, I. L. R. 11 Mad. 3: *Emp.* v. *Tuja*, I. L. R. 12 Bom. 36; dissenting from *In re Venkatachala*, I. L. R. 10 Mad. 154: *Emp.* v. *Vythilinga*, I. L. R. 11 Mad. 500.

In *In re Venkatachala*, I. L. R. 10 Mad. 154, it was held that a Sub-Registrar acting under s. 41 of the Registration Act is a Court, as a document presented to him under that section must be *given in evidence*. See *Emp.* v. *Vythilinga*, I. L. R. 11 Mad. 500; where the conflict in Bombay High Court is referred to. But the conflict in the Madras High Court has now been settled, it being held that a Registrar acting under the Registration Act, ss. 72–75, is a Court for the purposes of s. 195 of the Criminal Procedure Code.—*Atchayya* v. *Gangayya*, I. L. R. 15 Mad. 138. In that case the Full Bench held, that the term Court in s. 195 of this Code is the same as that defined by s. 3 of the Evidence Act, and that it therefore "includes all Judges and all Magistrates and all persons, except arbitrators, legally authorized to take evidence."

It is not necessary that sanction should be given before instituting a charge under s. 82 of the Registration Act III of 1877, for making false statements on oath, although the offence charged is of the same nature as that punishable under s. 193 of the Indian Penal Code.—*Gopi Nath* v. *Kuldip Singh*, I. L. R. 11 Cal. (F. B.) 566. See *Emp.* v. *Bateswr Mandal*, I. L. R. 10 Cal. 604.

Where a pardon is legally tendered under s. 336, *post*, and the accused makes a statement on oath, which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of an alternative charge of giving false evidence, and such sanction must, of course, under this section, be granted before, and not after, the commencement of the prosecution.—*Emp.* v. *Dalu Jiva*, I. L. R. 10 Bom. 100.

Revision.—The High Court is competent in the exercise of its revisional powers to interfere with an order of a subordinate Court, whether made under s. 195 or s. 476 of the Code, directing the prosecution of any person for offences referred to in these sections.—*In re Khepu Nath Sikdar*, I. L. R. 16 Cal. 730: see *Reg.* v. *Baijoo Lall*, I. L. R. 1 Cal. 450: *In re Kali Prosunno Bagchee*, 23 W. R. Cr. 39. Subordinate Courts in granting sanction should so frame their proceedings as to enable the superior Court to satisfy itself from the record whether the application for sanction was properly granted or not.—*Kalamalh Dass* v. *Mohesh Chunder*, I. L. R. 16 Cal. 661. The mere fact of the charge not being proved is not sufficient, and where that was all that appeared upon the record sanction was revoked.—*Ibid.*

Having regard to the terms of s. 487, *post*, a Sessions Judge is not debarred from trying a person charged under s. 196 of the Penal Code by reason of his having as District Judge given sanction for the prosecution.—*Emp.* v. *Sarat Chandra Rakhit*, I. L. R. 10 Cal. 706 (F. B.): *Emp.* v. *Dalla*, I. L. R. 6 Bom. 479. But if a Sessions Judge has directed the trial of a person for the offence of giving false evidence committed before himself he cannot try the case himself.—*Emp.* v. *Makhdum*, I. L. R. 14 All. 354. See *Emp.* v. *Ganga Din*, Weekly Notes, 1884, p. 329.

Criminal proceedings for perjury or forgery arising out of civil litigation should not, as a rule, go on during the pending of the litigation.—*In re Shri Nana Maharaj*, I. L. R. 16 Bom. 729 *Rex* v. *Osburn*, 14 Q. B. 390 *Rex* v. *Simmons*, 8 C. and P. 50.

Prosecution for offences against the State

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council, in this behalf.

The second branch of the section is in accordance with the ruling in the case of *Reg.* v. *Ninayak Divakar*, 8 Bom. H. C. R. Cr. 32

Chapter VI of the Penal Code deals with offences against the State.

Section 127 of the Penal Code deals with the receiving of property taken by war against the Government of any Asiatic power in alliance or at peace with the Queen, or by depredation on the territories of any power in alliance or at peace with the Queen.

Section 294A of the same Code deals with the keeping of lotteries

The parties concerned in keeping a lottery and issuing proposals for a lottery without the authority of Government are not liable to prosecution except under the sanction of the Government—*Act XXVII of* 1870, *s* 14. Before deciding not to proceed against the parties concerned in a lottery, the District Magistrate should fully investigate the matter and take the orders of Government—*Mad. Notification, 4th June* 1874, *Weir*, p 82. See G. O. of Govt. of India, dated 1st Nov. 1877, No. 329, embodied in G. O., Madras, dated 20th November 1877, No. 2738.

Where an accused was charged under s 121 of the Penal Code and proceedings were instituted upon a Police report, it was held that the absence of a complaint was a fatal defect which could not be cured by s. 537, *post*.—*Shamat Khan*, Punj Rec., 1890, p. 33.

Prosecution of Judges and public servants

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

As to the definition of "Judge" and "public servant," see ss. 19 and 21 of the Indian Penal Code, and s 4 (*w*) *ante*, which makes these definitions applicable under this Act.

The High Court at Bombay has held that this section applies to all acts ostensibly done by a public servant—*i s*, to acts which would have no special signification except as acts done by a public servant.—*Emp* v *Lakshman Sakharam*, I. L. R. 2 Bom 481.

A charge against a Judge of using defamatory language to a witness during a trial cannot be entertained by a Magistrate without previous sanction.—*In re Gulam Muhammad*, I. L. R 9 Mad 489

The Calcutta High Court in a Circular Order has stated that the charges, which, under s 466 (197 of the present Code) of the former Code of Criminal Procedure, cannot be entertained against the officers therein described, except under the sanction or direction of the Local Government or other competent authority, relate to offences which can be committed by public servants *as such*, and which are specified in Chap IX of the Indian Penal Code, and to no other Offences committed against the person or property of individuals by one who happens to be a public servant are not necessarily committed by him *as such public servant* in the sense in which those words are used in the Penal Code, and, unless committed in that character, must be regarded as the acts of *individuals in their private capacity*, charges, therefore, founded on such acts do not need the sanction of Government or other competent authority aforementioned before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are—*Cal. H. C. Cir. No.* 20 *of 4th October* 1864, *Wilkins*, p. 114. See, however, the remarks of MITTER J., in *Reg.* v. *Purushram Keshav*, 7 Bom. H. C. R. Cr. 61, commenting on that Circular Order and the explanation of these remarks given by WEST, J, on reference to MELVILL, J., in the case of *Emp.* v. *Lakshman Sakharam*, I. L. R. 2 Bom 409, p. 485.

Section 132 provides that no prosecution against any Magistrate, Military officer, Police officer, soldier or volunteer for any act purporting to be done under Chap IX of this Code which relates

to unlawful assemblies shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and

(*a*) no Magistrate or Police-officer acting under that Chapter in good faith,

(*b*) no officer acting under s. 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under s. 128 or s. 130, and

(*d*) no inferior officer or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

Section 537, *post*, provides that no finding, sentence, or order of any competent Court shall be reversed or altered under Chap. XXVII, or on appeal or revision, on account of the want of sanction under s. 195, unless the omission has caused a failure of justice. It is silent as to want of sanction required under s. 132 or 197.

A Municipal Corporation is not a "public servant" within the meaning of this section.—*Emp.* v. *Municipal Corporation of Calcutta*, I. L. R. 3 Cal. 758: (S. C.) 2 C. L. R. 520. And the protection extended by the section to certain individual public servants does not extend to such a corporation prosecuted under the Penal Code for creating a public nuisance—*Ibid*: see *Reg.* v. *Birmingham and Gloucester Ry. Co.*, 3 Q. B. 223: *Reg.* v. *Scott*, 3 *ib.* 547: *Reg.* v. *Great Northern Ry. Co.*, 9 *ib.* 315. But in the Punjab it has been held that a member of a Municipal Committee is a public servant not removable from his office without sanction of Government under s. 8 of Act XIII of 1884, and that he could not be prosecuted without sanction for defamation in respect of statements in a resolution of the Committee to which he was a party.—*Bakshi Ram*, Punj. Rec., 1890, p. 26.

In the case of the *Emp.* v. *Municipal Commissioners of Calcutta*, AINSLIE, J., said:—"By s. 21 of the Penal Code, the word 'person' is defined to include a body of persons whether incorporated or not, and therefore the word 'person' in s. 21 may be read as a body of persons incorporated. The word 'public servant' in that section may, consequently, denote a body of persons incorporated falling under any of the descriptions given therein. . . . . The class of public servants referred to (in s. 39 of Act IV of 1877) consists of those who are 'not removable from office without the sanction of Government.' But if the whole be read as describing the class exempted from prosecution without the previous sanction of Government, the description can only be applied to a class not removable from office at all, by dropping in the words 'without the sanction of Government,' which have no meaning as applied to such public servants . . . . . It does not seem to me that it must necessarily be implied that by the words 'not removable from office without the sanction of Government,' it was the intention of the Legislature to include those who are not removable from office under any circumstances at all."

The corresponding section (466) of Act X of 1872 was held not to apply to a prosecution of a Police patel in the Bombay Presidency.—*Emp.* v. *Bhagwan Devraj*, I. L. R. 4 Bom. 337: *Emp.* v. *Irbasapa*, *ib.* 479.

The Madras Government, by a notification, dated the 27th August 1873, notified that, under cl. 1 of s. 466 of the Criminal Procedure Code, the power to direct or sanction the entertainment of complaints of offences committed in their public capacity by Subordinate Magistrates, Tahsildars, and Deputy Tahsildars had been restricted by the Governor of Madras in Council to the Board of Revenue; and in continuation of the above notification it was further notified, on the 13th September 1873, that in regard to all other classes of Magistrates, the like power was reserved to the Governor of Madras in Council.—*Madras Gazette*, 1873, p. 1303.

Where, after a magisterial inquiry, a European British subject, being a public servant, within the meaning of this section, was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railway, in His Highness the Nizam's dominions, without any previous sanction as required by the section, a Full Bench of the Bombay High Court held that the proceedings were irregular and without jurisdiction, and that a sanction subsequently obtained was of no effect. But it held also that the provision of s. 532, *post*, applied, and that the Judge presiding at the Criminal Session of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner.—*Emp.* v. *Morton*, I. L. R. 9 Bom. 288.

Prosecution for breach of contract, defamation and offences against marriage.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Chapter XIX of the Penal Code deals with criminal breach of contracts of service; Chap. XXI, with defamation.

Suppose a firm (all the members of which are in England) is carried on in Calcutta, through a manager, and it is defamed in Calcutta. Apparently no prosecution could proceed upon the complaint of the manager, unless he were specially aggrieved.

"Complaint" means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, s. 4 (*a*)—See notes to s. 191, *supra*. A charge of defamation not contained in the complaint presented to the Magistrate, but added subsequently by the Magistrate upon statements made by the complainant on his examination under s. 200, *post*, whether of his own accord or in consequence of suggestions from the Magistrate, was held not to be a legal complaint made by an aggrieved person, within the meaning of s. 4 (*a*) and s. 198 so as to enable the Magistrate to take cognizance of the offence.—*Emp.* v. *Deo Kinandan*, I. L. R. 10 All. 39. See *Emp.* v. *Kallu*, I. L. R. 5 All. 233.

See also note to next section. Where a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved and the Magistrate may take cognizance upon his complaint.—*Chettiam Naidu* v. *Ramaswami*, I. L. R. 14 Mad. 379.

Sections 493, 496 of the Penal Code relate to marriage.

Under this section, when a case relating to marriage is once properly before the Magistrate, he may proceed against any person implicated. Thus, where, in an inquiry as to the abduction of a wife, it appears that the wife has committed bigamy, the Magistrate may, without further complaint, commit the woman for the latter offence.—*In re Ujjala Bewa*, 1 C. L. R. 523. See s. 238, *post*.

The brother of a lunatic is not as such 'a person aggrieved by such offence' within the meaning of this section for the purpose of a prosecution against the wife of the lunatic for bigamy, and his complaint, it was held, could not be entertained.—*Emp.* v. *Bai Rukshmani*, I. L. R. 10 Bom. 340.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Prosecution for adultery or enticing a married woman.

Sections 497 and 498 relate to adultery and to the enticing, or taking away or detaining, with a criminal intent, married women.

It seems to have been doubtful whether the formal assent of a husband to a charge of adultery added at the end of his deposition is a proper compliance with this section.—*Reg.* v. *Luckhy Narain Nagory*, 24 W. R. Cr. 18. In the case, however, of *Rahmatulla* v. *Emp.*, Punj. Rec., 1883, p. 12, the complainant informed the Police and filed a petition before the Magistrate that the accused had committed a rape on his wife, and prayed that the accused might be punished under s. 376 of the Penal Code. The Police, after inquiry, reported to the Magistrate that the case was one of adultery and not of rape, whereupon the Magistrate directed that the accused should be brought up. In his deposition before the Magistrate the complainant stated that he wished to proceed against the accused for adultery. The Court considered that this statement was not a sufficient compliance with the law, which lays down that a complaint under s. 497 of the Penal Code shall not be instituted except upon a complaint made by the husband of the woman. The Court stated that it shared the doubts expressed by the High Court of Calcutta in the case of *Reg.* v. *Luckhy Narain Nagory*, 24 W. R. Cr. 18.

The case of *Emp.* v. *Kallu*, I. L. R. 5 All. 233, was similar to that in the Punjab Chief Court, and there, as subsequently in the case of *Emp.* v. *Deo Kinandan*, I. L. R. 10 All. 39, the High Court at Allahabad held that a formal complaint was necessary. See note to previous section.

In all criminal cases, except those referred to in ss. 478 and 479 of Act X of 1872 corresponding with this section, it was directed by the High Court of the N.-W. Provinces that the prosecution be designated "Queen-Empress."—*N.-W. Provinces Gazette*, 1879, p. 123.

Where a complaint was made to a Magistrate, accusing a certain person of having taken or kept the wife of the complainant, it appeared in the course of the proceedings that the wife had committed bigamy, whereupon the Magistrate, without a further complaint, committed the wife alone for trial by the Court of Session,—it was held that the Magistrate had acted within his jurisdiction.—*In re Ujjala Bewa*, 1 C. L. R. 523. See s. 238, *post*.

A minor husband cannot be represented by another for the purpose of instituting a prosecution.—*Mad. H. C. Pro., 7th February* 1871; *Weir*, p. 29.

This section does not require the consent of the husband to a prosecution for house-trespass with intent to commit adultery.—*Mad. H. C. Pro., 18th June* 1868 *and 15th November* 1869; *Weir*, p. 29.

The death of the husband does not put an end to a prosecution for adultery. All that the law requires is that the prosecution should be instituted by the husband.—*Mad. H. C. Pro., 13th July* 1869; *Weir*, p. 29.

A Magistrate having committed an accused for trial on a charge of adultery is not competent to discharge the accused on the representation of the prosecutor that he wishes to withdraw from the prosecution.—*Emp.* v. *Jangbir*, I. L. R. 4 All. 150, as a commitment can only be quashed by the High Court.—*S.* 215.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate :

Examination of complainant.

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192,

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing,

(*c*) when the case has been transferred under section 192, and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

The examination must now be upon oath. Under Act X of 1872, it was optional on the part of the Magistrate to examine the complainant before transferring a case under that section, whether the complaint was in writing or not. Now the Magistrate need only examine the complainant when the complaint is not in writing and he transfers the case under s. 192. As to proviso (*b*), see Act IV of 1877, s. 30; and as to proviso (*c*), see the latter part of para. 2 of s. 44, Act X of 1872.

Under s. 192 any District Magistrate or Sub-divisional Magistrate may transfer any case of which he has taken cognizance for inquiry or trial to any Magistrate subordinate to him, and under s. 529 if any Magistrate not empowered by law erroneously but in good faith transfers a case, his proceedings shall not be set aside merely on the ground of his not being empowered.

Complaint.—A complaint means the allegation, made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include the report of a Police-officer.—*S.* 4 (*a*), *supra*. A charge of defamation not contained in the complaint, but added subsequently by the Magistrate upon statements made by the complainant in his examination under s. 200 of the Code, whether of his own accord or in consequence of suggestions from the Magistrate, is not a legal "complaint" made by an aggrieved person within the meaning of ss. 4 (*a*), and 198, so as to enable the Magistrate to take cognizance of the offence.—*Emp.* v. *Deo Kinandan*, I. L. R. 10 All. 39: see *Emp.* v. *Kallu*, I. L. R. 5 All. 233. See notes to ss. 191 & 195 *supra*.

Who may Complain.—As a general rule any person having knowledge of the commission of an offence may set the law in motion on a complaint even though he is not personally interested or affected by the offence. With the exception of ss. 195—198 there is nothing in this Code which shows an intention to confine prosecutions to the persons directly injured.—*In re Ganesh Narayan Sathe*, I. L. R. 13 Bom. 600.

Court-Fees.—An application or petition containing a complaint or charge of any offence other than offence for which Police officers may, under the Criminal Procedure Code, arrest without warrant and presented to any Criminal Court, must have an 8-anna Court-fee stamp.—*Court-Fees Act, VII of* 1870, *Sched.* II, 1 (*b*).

When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which Police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied, is reduced into writing under the Criminal Procedure Code, the complainant shall pay a fee of 8 annas, unless the Court thinks fit to remit such payment.—*Ib.*, *s.* 18. The Court, if it convict the accused person, shall, in addition to the penalty imposed, order him to repay to the complainant the fee paid on the application or petition or for the examination.—*Ib.*, *s.* 31.

The complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company is exempt from the payment of a fee.—*Ib.*, *s.* 19, xviii.

False Charges.—As to prosecutions under s. 211 of the Penal Code when complaints made to Magistrates are dismissed, or charges laid before the Police are found to be false, see notes to s. 195 *supra*.

It is not competent to a Subordinate Magistrate to direct a complainant, who brings a charge of petty theft or assault ordinarily within the cognizance of heads of villages, to seek redress from the head of the village. Complaint having been duly made, the Subordinate Magistrate is bound to proceed under the section and dispose of the case according to law.—*Mad. H. C. Pro.*, *18th Dec.* 1873; *Weir*, p. 6.

Examination of Complainant.—Except when the complaint is in writing and he transfers the case under s. 192, the Magistrate taking cognizance of an offence is bound to examine the complainant and then he can either issue summons to the accused, or order an inquiry under s. 202 or dismiss the complaint under s. 203.—*Umer Ali* v. *Safar Ali*, I. L. R. 15 Cal. 334. It may be questioned in cases before a Presidency Magistrate who is not bound to take down the complaint in writing, whether the Magistrate could properly act on statements made by the complainant's pleader or counsel, directly and in reply to questions put to the pleader or counsel without any actual examination of the complainant himself.

In Madras it has been held that the omission to examine the complainant under s. 200 is only an error of procedure.—*Emp.* v. *Monu*, I. L. R. 11 Mad. 443.

If a Magistrate dismisses a complaint because he finds no offence has been committed, he ought to record his reasons for so doing, otherwise it will be impossible for the High Court exercising its revisional powers, to consider whether the discretion of the Magistrate has been properly exercised.—*Baidya Nath* v. *Muspratt*, I. L. R. 14 Cal. 141.

The proper mode of ascertaining what a complaint is, is to examine the complainant and reduce his examination to writing. If it is then ascertained that the complaint is not of an offence, the order dismissing it should still be in writing. It is irregular to endorse and return to a party his petition or complaint alleging an offence. Such papers form part of the records of the Court, and should not be returned to the party. What the party is entitled to, is an authenticated copy of the Magistrate's order on the proper stamp.—*Mad. H. C. Pro.*, *10th June* 1869; *Weir*, p. 6.

Until the complainant has been examined, process cannot be issued; nor can the complaint be dismissed.—*Pro.*, 4 *Mad. H. C. R.* 162; *Weir*, p. 7.

Where a Magistrate, without having first examined the complainant, dismissed the complaint, and directed the complainant to be prosecuted under s. 182 of the Penal Code, a conviction under that section was set aside on the ground that the dismissal of the complaint had been irregular by reason of the non-examination of the complainant.—*In re Biyogi Bhagut*, 4 C. L. R. 134: see also *Re Bullee Singh*, 17 W. R. Cr. 2.

The Magistrate is bound to receive all complaints, whether they be preferred orally or in writing.—*Cal. H. C. C. O., No.* 6 *of* 16*th May* 1864; *Wilkins*, p. 21.

Where a complaint of theft was made to a Magistrate of the third class, who returned the petition to the complainant, with an endorsement that he should obtain redress from the village Magistrate, it was held that this procedure was unauthorized. A complaint having been made to him he was bound to proceed under the Code and dispose of the complaint according to law. The fact that the complaint was also cognizable by the Head of the village did not affect the competency of the Magistrate, nor could he thus decline to exercise his jurisdiction.—*Mad. H. C. Pro., 7 Mad. Appx. xxi.*

A charge properly laid under the Penal Code should be investigated, even if the case be one in which a civil action will lie.—*Khosal Singh* v. *Toolshee Chowdhry*, 10 W. R. Cr. 40.

The examination of the complainant is not to be a *mere form*, but an intelligent inquiry into the subject-matter of the complaint, carried far enough to enable the Magistrate to exercise his *judgment* as to whether there is or is not sufficient ground for proceeding.—*Cal. H. C. C. O., No.* 4 *of* 25*th February* 1873; *Wilkins*, p. 21.

It is not a proper course for a Magistrate when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a Police-officer. He is bound to receive the complaint, and after examining the complainant, proceed according to law. A different course, it was said, would foster abuses and defeat the purposes of the law which is to give to persons who have been injured an access to justice independent of the Police.—*In re Jankidas Guru*, I. L. R. 12 Bom. 161.

Care should be taken, in conducting examinations of complainants, to make the inquiry sufficiently full to enable the Magistrate to judge whether there are any grounds for proceeding.—*Bombay Gazette*, 1870, p. 471. An examination confined to asking the complainant if the circumstances set forth in the complaint are true, and what evidence he has to prove them, is not sufficient. An intelligent inquiry into the subject-matter of the complaint would frequently render further proceedings unnecessary, and there would consequently be a diminution of inquiries which end in a discharge.—*Bom. H. C. Cir.* 43. The examination is no mere formality; it is the result of the examination which ought to lead the Magistrate to determine whether he will put the machinery of the Criminal Court in motion by the issue of a summons or warrant to cause the accused person to appear before him. Section 147 (Act X of 1872) lays down that, if in the judgment of the Magistrate there be no sufficient ground for proceeding, he shall dismiss the complaint. The preliminary examination, therefore, if properly made, will frequently result in the summary dismissal of a complaint, and save an innocent person from the trouble and annoyance of appearing at the bar of a Criminal Court. In the interests of the public, therefore, as well as with a view to the rapid dispatch of work, the careful observance of the law in this particular is incumbent upon Magistrates.—*Smyth*, p. 89.

The following opinion, which has been expressed by the Chief Court of the Punjab extra-judicially on two points connected with the recording of reports made to the Police in cognizable cases and the power of Magistrates to order the Police to investigate such cases, was, at the request of the Local Government, published for the information of the Criminal Courts of the Punjab.

2. The first point on which the Judges were asked to express an opinion was as to whether a distinction is to be drawn between ss. 154 and 157 of the Code of Criminal Procedure (of 1872) in regard to the recording of reports made to the Police in cognizable cases. On this point the Judges are of opinion that whereas every information covered by s. 154 must be reduced to writing as provided in that section, it is only information which raises a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the Police-officer to whom it is given which compels action under s. 157.

3. The second question referred to was whether a Magistrate can refuse to take cognizance of a complaint which has been duly made to him on the ground that it relates to an offence cognizable by the Police, and should therefore have been made to the Police and not to himself, and whether either without or after taking cognizance a Magistrate can properly order the Police to investigate such a case.

4. As regards the matter of taking cognizance, the Judges are of opinion that a Magistrate cannot refuse, when properly called on to do so, to exercise jurisdiction merely on the ground that the complainant might reasonably have had recourse to the Police instead of himself. This opinion is in accordance with the rulings noted in the margin.

In the matter of *Thacker* v. *Bhagwan Dass Harjiwan* (I. L. R. 4 Bom. 489): *Prosad Dass Mullick* v. *Kunick Lall Mullick* (I. L. R. 7 Cal. 167.)

5. The question remains as to whether a Magistrate, after having taken cognizance, may not properly call the Police to assist in investigating the case. It seems to the Judges that a Magistrate who has taken cognizance under s. 191 of an offence cognizable by the Police may, after complying with the provisions of s. 200, and issuing his process (if he sees no reason for doubting the truth of the complaint and otherwise finds sufficient grounds for proceeding), give information of the case to the Police-officer having jurisdiction with a view to his further investigating its facts and circumstances in the manner laid down in s. 157. In such a case as is contemplated, the Police-officer would not have to take measures for the discovery and arrest of the offender, as the supposed offender would be known, and a process would have been issued by the Magistrate to compel his appearance; but in other respects it would rest with him to take steps to secure the case being properly brought before the Court, and he would be responsible that the witnesses named by the complainant to the Magistrate were supplemented by any others who might be necessary to complete the case for the prosecution.

6. The above remarks proceed on the assumption that the complainant to the Magistrate knows or thinks he knows who has injured him. In cases of complaint of a cognizable offence against an unknown offender, the Magistrate would have to record under s. 203 that there were, in his judgment, no sufficient grounds for proceeding It would also be open to him to communicate to the Police the information supplied to him, or to leave it to the complainant either to apply to the Police or to take such other measures as he thought proper for discovering the offender.—*Cir. No. VIII, 1073 of 1884, dated 27th June 1884; Punj. Rec., 1884; Cir. Orders*, p. 7.

Jurisdiction.—As to cases where the Magistrate has no jurisdiction see next section.

Procedure by Magistrate not competent to take cognisance of the case.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Compare s. 145 of Act X of 1872. That section provided that if the Magistrate was not competent to receive the complaint, he should refer the complainant to a Magistrate having jurisdiction, and this would apply whether the complaint was in writing or not. This section directs that if the complaint is in writing to a Magistrate not having jurisdiction, he shall return it for presentation to a proper tribunal with an endorsement to that effect. Apparently, therefore, whatever the intention of the Legislature might have been, this section does not cover the case of a verbal complaint to a Magistrate not competent to receive it. In the case of a verbal complaint to a Magistrate not having jurisdiction, it would be unnecessary to reduce it to writing, and sufficient to direct the complainant to apply to a Court having jurisdiction.

As to the competency of Magistrates to take cognizance of cases, see ss. 191 and 195—199 and Sched. II, col. 8. As to cases against European British subjects, see ss. 443 and 445, *post*.

Postponement of issue of process.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

This section applies to the Police in the towns of Calcutta and Bombay.

The complainant must, apparently, be examined before the Magistrate can proceed under the section. This provision was introduced, apparently, in consequence of the remarks of L. S. JACKSON, J., *In re Biyogi Bhagut*, 4 C. L. R. 134; see *Umer Ali* v. *Safer Ali*, I. L. R. 13 Cal. 334. An omission, however, to examine the complainant is an error of procedure only.—*Enap.* v. *Monu*, I. L. R. 11 Mad. 443. This and the next section must be read together.—*Baidya Nath* v. *Muspratt*, I. L. R. 14 Cal. 141.

The section in express term applies only to a complaint which is distinguished from information in s. 191, *supra*; and, further, it applies only when the Magistrate sees reason to distrust the truth of the complaint.—*Narain Singh*, Punj. Rec., 1888, p. 43.

Under section 155 a Police-officer is prohibited from investigating a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate. It confers no power or authority on Magistrates to direct a local investigation or call for a Police report. It is only a Magistrate empowered under s. 202 who can direct a local investigation.—*In re Janki Das Guru*, I. L. R. 12 Bom. 161.

A reference to a Police-officer under this section for inquiry and report cannot be made after evidence has been taken for the complainant and process issued.—*Sadagopacharyar* v. *Ravarachariyar*, I. L. R. 9 Mad. 282. Thus, where a trial had commenced and evidence had been taken for the prosecution it was held, when the Magistrate had vacated office, his successor could not ignore what had been done and refer the case to the Police.—*Ibid.*

The previous inquiry provided for by this section before a complaint is taken up ought not to be made after the accused has been brought before the Court under a warrant.—*Ramkant Sircar* v. *Jadub Chunder Dass Byragee*, 21 W. R. 44.

In the case of *Queen* v. *Yendava Chandramma*, I. L. R. 7 Mad. 189, a Magistrate of the first class, after considering the result of an investigation by a Police-officer under the section, dismissed the complaint as false, and passed an order sanctioning the prosecution of the complainant for an offence punishable under s. 211 of the Penal Code, and directed a third class Magistrate to hold a preliminary inquiry, the offence being cognizable by the Court of Sessions only. It was held that as there was no application for sanction to prosecute, the order must be taken to be a complaint made by the first class Magistrate, and, therefore, under s. 470, *post*, the third class Magistrate had no jurisdiction to hold the inquiry. See s. 476, *post*.

In Presidency-towns it is only the Chief Magistrate, unless the other Presidency Magistrates have been especially empowered by the Local Government, who can direct a previous local examination. The only other Magistrates who can do so are Magistrates of the first or second class. Magistrates of the third class cannot postpone the issue of process.

Caution against the indiscriminate use of the Police for the Investigation of Complaints.—Magistrates are cautioned against the indiscriminate use of Police agency for the purpose of ascertaining matters as to which a Magistrate is bound to form his own opinion upon evidence given in his presence. This caution is especially needful in respect of cases triable under Chap. XX of the Code of Criminal Procedure and all cases regarding offences not triable by the Police.—*Cal. H. C. C. O., No. 7 of 20th July* 1871; *Wilkins*, p. 108.

If a Magistrate distrusts the statement of the complainant, but his distrust is not sufficiently strong to warrant him acting upon it except upon a further inquiry as provided by s. 202, he ought to record his reasons for so doing in order that a Court exercising revisional powers may consider whether the Magistrate has properly exercised his discretion.—*Baidya Nath* v. *Muspratt*, I. L. R. 14 Cal. 141.

Dismissal of complaint.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint if, after examining the complaint and considering the result of the investigation (if any) made under section, 202 there is, in his judgment, no sufficient ground for proceeding.

The section apparently deals with the dismissal of the complaint before the issue of process against the accused; and a dismissal of a complaint under the section does not amount to an acquittal.—*S.* 403, *Expl.*, *infra*. Under s. 437, *post*, the High Court or Court of Session may direct the District Magistrate by himself or any of the Magistrates subordinate to him, and the District Magistrate may himself make or direct any Subordinate Magistrate to make further inquiry into any complaint which has been dismissed under s. 203, or into the case of any accused person who has been discharged.

When a complaint has been dismissed by a Magistrate under this section, no other Magistrate can again entertain the same complaint without an order from some one of the authorities mentioned in s. 437, *infra*. See *Mad. H. C. Pro.*, 28th *March* 1878; *Weir*, p. 8.

There is no appeal.

Revision.—Section 202 and 203 should be read together, and a Magistrate dismissing a complaint under s. 203, on the ground that no offence is disclosed in the statement, or that he distrusts the statement made by the complainant, and whether or not he finds it necessary to direct a local investigation by a Police-officer under s. 202, must record his reasons for so doing, so that a Court exercising revisional powers under s. 437, *post*, may consider whether the Magistrate has properly exercised his discretion—*Baidya Nath* v. *Muspratt*, I. L. R. 14 Cal. 141.

An order of dismissal, on account of the absence of the complaint, passed by a Magistrate under s. 124, Act IV of 1877, it was held, did not operate as an acquittal of the accused, and was no legal impediment to the institution of fresh proceedings by the presentation of a fresh complaint.—*In re Thomson*, 8 C. L. R. 106: (S. C.) I. L. R. 6 Cal. 523.

If, upon any complaint duly made before a Magistrate, it should appear to him that the act imputed amounts to an offence under the Indian Penal Code or any penal law in force, and that there is *primâ facie* reason to suppose the accusation to be true, it is his duty to proceed, although he may consider that a civil suit would afford the more convenient or appropriate remedy.—*Reg.* v. *Nubus Mahton*, 8 W. R. 65.

A complaint cannot be dismissed until the examination of the complainant has been recorded. —*In re Ganesh Narayan Sathe*, I. L. R. 13 Bom. 590. Having examined the complainant, the Magistrate may then either issue summons, or order an inquiry under s. 202, or dismiss the complaint under s. 203.—*Umer Ali* v. *Safar Ali*, I. L. R. 13 Cal. 334. See *In re Janki Das*, I. L. R. 12 Bom. 161.

In Emp. v. *Murphy*, I. L. R. 9 All. 606, it was held, where a deposition in the shape of a complaint was made orally and in writing and was sworn to, there had been a sufficient examination of the accused.—*Dulali Bewa* v. *Bhubun Shaha*, 3 B. L. R. Ap. Cr. 53. See note to s. 195, *ante*.

The expression, "sufficient ground," points exclusively to the facts which the complainant brings to the knowledge of the Magistrate and to their establishing a *primâ facie* trustworthy case against the accused. The motives by which complainants are actuated must necessarily be of the most varied description and should not be taken into account.—*In re Ganesh Narayan Sathe*, I. L. R. 13 Bom. 590.

Where the offence is a warrant case and not a summons case the Magistrate ought to proceed with the inquiry or trial in spite of the withdrawal of the complainant if he finds the elements of an offence on the facts set forth in the complaint.—*In re Ganesh Narayan Sathe* (II), I. L. R. 13

Bom. 600. But if the facts stated in the complaint constitute no offence, the complaint may be dismissed without any examination.—*Mad. H. C. Pro., 24th July* 1875; *Weir*, p. 7.

In a case in respect of which a warrant might issue, and which is triable under this Chapter, the Magistrate ought to order the discharge of the accused persons, although they are in attendance, if he thinks that no case of a criminal character is made out against them.—*In re Niamutulla* v. *Gopal Saha*, 6 B. L. R. Appx. 6: (8 C.) 14 W. R. Cr. 63.

When a case has once been made over by a Magistrate for trial to a Subordinate Magistrate, the Magistrate's jurisdiction to do anything more in the matter ceases so long as the transfer to the Subordinate Magistrate is in existence. If the Magistrate wishes to take any further steps in the matter, or to decide the case himself, he must formally withdraw the case from the Subordinate Magistrate Until he does so, the only person who can deal with the case is the Subordinate Magistrate to whom the trial of the case has been referred.—*Queen* v. *Bstilios*, 12 W. R. Cr. 53. If the Subordinate Magistrate has issued warrants, and the Magistrate transfers the case to his own file, he must proceed with it, as from the stage where he found it, unless something occurs to show that the Magistrate who issued the warrant has made a wrong exercise of his discretion. He is not justified in suspending the warrant and dismissing the case.—*In re Roghoo Parirah*, 10 B. L. R. Appx. 26: (8. C.) 19 W. R. Cr. 28.

A prosecution may be maintained in respect of a false charge made to the Police or contained in a complaint which has been dismissed under this section, although there has been no judicial investigation.—*Nusibunnissa Bibee* v. *Sheikh Erarat Ali*, 4 C. L. R. 413: (8. C.) 1 L. R. 4 Cal. 869. It was held, upon the petition of the complainant in that case, that the order of dismissal was illegal and must be set aside, upon the ground that the complaint was dismissed without the complainant being examined. See note to s. 195, *supra*.

Where a person made a complaint to the Police that the accused had enticed away his wife (a non-cognizable offence) and committed theft (a cognizable offence) the Police inquired into the latter offence only, and finding no *primâ facie* case made out, reported to that effect to the Magistrate, who directed that the offence should be expunged from the list of offences reported. It was held that, under the circumstances, there had been no dismissal of the complaint in respect of the former offence, and that there was no bar to the complaint as to that offence being taken up and proceeded with.—*Government of Bombay* v. *Shidapa*, I. L. R. 5 Bom. 405.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Issue of process.

204. If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second Schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

Fees.—As to fees for processes, see note to s. 68, *ante*.

A complainant's deposition must show some grounds for proceeding before a Magistrate can legally issue a summons (*In re Huronath Roy*, W. R. Sup. Vol. Cr. 33), and the parties charged should not be summoned before the complainant is examined.—*Rujeeb Mundle* v. *Lochan Mundle*, W. R. Sup. Vol. Cr. 37. See also *Pro.*, *4 Mad. H. C. R.* 163.

The proper officer to issue the warrant is the officer who has heard the complaint made, because it is he who can best exercise a discretion with regard to the *primâ facie* merits of the complaint.—*In re Raghoo Parirah*, 10 B. L. R. Appx. 26: (8. C.) 19 W. R. 28.

It is not a ground for interference by the High Court that a Magistrate has issued a warrant when he should have issued a summons.—*Ansaf Pulney* v. *Ramsoonder Chuckerbutty*, 1 W. R. Cr. 16.

If a Magistrate issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into and try the case.—*S.* 445, *infra*.

See s. 90 and notes thereto.

Magistrate may dispense with personal attendance of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal

attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

When the sentence is one of fine only, it may be pronounced in the presence of the accused person's pleader.—*Section* 360, *infra*.

In ordinary summons cases against women alleged to be *purdanashin*, a Magistrate, especially where there is a suggestion that the charge is brought for the purpose of annoyance, will exercise a wise discretion in granting applications to exempt such women from personal attendance in the first instance, or until a *prima facie* case has been satisfactorily made out. In a case in which certain women alleged to be *purdanashin* women were charged with the abetment of an offence under s. 494 of the Penal Code, and in which an application by them to appear in the first instance by pleader was refused, STRAIGHT, Offg. C. J., said: "In my opinion he (the Magistrate) might well have dispensed with their personal attendance until he had before him some legal and satisfactory evidence indicative of some or all of them having committed a breach of the criminal law, when it would have been time enough to require them to appear.—*In re Rohim Bibi*, I. L. R. 6 All. 59.

As to the right of *purdanashin* women to give their evidence in pálkees, see *Rookia Banu* v. *Roberts*, 1 B. L. R. Sh. Notes X.—See also *Hussein Khan* v. *Emp.*, Punj. Rec., 1887, p. 95.

Commissions.—As to examination of witnesses who are *purdanashins* on commission, see s. 503 and the notes thereto.

Ordinarily no person's appearance should be dispensed with who is charged with an offence not bailable.—*Bom. H. C. Clr.* 259.

Where the personal attendance of an accused is dispensed with, a recognizance-bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear either in person or by an agent; and a Magistrate has no legal authority to secure the attendance of an agent by such a bond.—*Reg.* v. *Lalubhai Jasubhai*, 5 Bom. H. C. R. Cr. Cas. 64.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, *or* [Act XII of 1891, Sched. II] Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

As to European British subjects, see s. 443, *infra*.

In Bengal, all Magistrates of the second class were invested with power to commit any person to the Court of Session for any offence triable by such Court.—*Calcutta Gazette*, 1873, Part I, p. 67.

In Madras, all Magistrates are empowered to commit to the Court of Session.—*Madras Gazette*, 1873, p. 717.

In the Punjab, all Magistrates of the second class were invested under s. 143 of Act X of 1872, with power to commit for trial.—*Punjab Gazette*, 1873, p. 75.

As to power of a Magistrate of the second class invested with power to commit under this section, see Sched. III, Art. III (7). See also *Ram Sundar* v. *Nirotam*, I. L. R. 6 All. 477.

Where a Magistrate without jurisdiction commits an accused to the Sessions Court, the commitment is void, and no reference is necessary to have it set aside.—*Emp.* v. *Alim Mundle*, 11 C. L. R. 55. A commitment made with jurisdiction can only be quashed by the High Court.—*S.* 215, *post*.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Process for production of further evidence.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

Section 540, *infra*, empowers a Magistrate at any stage of any inquiry, trial or other proceeding to summon or examine witnesses, or to examine any person in attendance though not summoned as a witness, or to re-call and examine any witness.

The mere showing to a witness of a summons issued under this section is not sufficient. Either the original should be left with the witness, or should be exhibited to him, and a copy of it delivered or tendered.—*Reg.* v. *Karsanal Danatram*, 5 Bom. H. C. R. Cr. Cas. 20. See s. 60, *ante*. Magistrates may issue summons for service upon witnesses beyond the limits of their districts. In the case of warrants, a special procedure is prescribed. See s. 84, *ante*, and see 3 *Mad. H. C. R. Appx.* v.

Rules for Examination of Complaints and Witnesses.—As regards the examination of complaints, witnesses, or persons accused of the commission of any offence under inquiry or trial before a Criminal Court, the following rules which were issued under the former Code should be strictly observed in every case by Magistrates and Sessions Judges :—

(*a*) Every witness shall be examined *viva voce* in open Court.

(*b*) A Magistrate or Judge shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

(*c*) If, after the examination of a witness has commenced, the Magistrate or Judge is compelled to attend to any other business, the examination of the witness shall be suspended as long as such other business is being attended to.

(*d*) The examination of a witness shall not be interrupted for the purpose of enabling the Magistrate or Judge to attend to other business unless such business is of an urgent nature.

(*e*) It shall be the duty of every Appellate Court subordinate to the High Court to examine the memorandum of the evidence made by the Subordinate Court, and to report to the High Court cases in which it shall appear that the above rules have not been strictly and properly attended to.

(*f*) The evidence of every witness shall invariably be recorded in the presence of the officer who may decide the case, except in the cases provided for by ss. 349 and 350 of the Code of Criminal Procedure in which the re-calling and re-examination of the witnesses is optional with the superior Magistrates.

(*g*) After the examination of witnesses has commenced, the trial or preliminary enquiry under Chap. XIII of the Code of Criminal Procedure should be proceeded with until all the witnesses in attendance have been examined, those for the prosecution being first examined; and if any witness be detained for a longer period than two days, the Magistrate should record a memorandum, stating the reasons of such detention.

(*h*) When it is deemed necessary to adjourn the hearing of a case, the adjournment shall be for as short a time as possible, and no person accused of any offence shall be remanded for any period exceeding fifteen days (s. 344).

(*i*) Every Sessions Judge and Magistrate shall sit daily and punctually at the hour appointed for the opening of his Court, unless prevented by circumstances which are to be recorded in the proceedings of the Court.—*Cal. H. C. C. O. No.* 6 *of* 16*th May* 1864; *Wilkins*, pp. 6, 7.

Remand.—In *Abdul Kadir Khan's* case, 11 B. L. R. App. 18, it was said the prisoner should be promptly brought before the Magistrate, and the Magistrate has no authority further to detain him in custody, or to remand him to prison, without some reason made manifest to him either in the shape of sworn testimony or in some other form which can be put on the record. The Madras High Court, in the case of *Manikam* v. *Queen*, I. L. R. 6 Mad. 63, concurred in that view. In that case evidence was available, but it appeared necessary to the Magistrate to defer the examination of the witnesses in order that further evidence might be produced, so that the inquiry when commenced might be continuous. The Court held that this reason recorded by the Magistrate, although the facts alleged were not sworn to, justified a remand for five days and a further remand for four days. It is to be borne in mind, however, that an accused person has the right to have the evidence against him recorded as soon as possible, and the fact that there is, or may be, a great body of evidence forthcoming against him is not a ground for a detention for an inordinate period.—*Per* INNES, Offg. C. J. See s. 344, which is as follows :—

"If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same, on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time, every order made under this section by a Court other than a High Court shall be in writing, signed by the presiding Judge or Magistrate. *Explanation.*—If sufficient evidence has been obtained to raise a suspicion may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand." See note to this section, *post*.

The general rule in Police prosecutions is, that where an accused person is first brought before a Magistrate and a remand is required by the prosecutor, it is ordinarily sufficient to show by the evidence of a Police-officer that the Police are in possession of information believed to be reliable; that the accused has committed an offence, but when the accused is again brought up after remand

and a further remand is needed, some direct evidence of guilt of the accused should be required by the Magistrate to justify him in refusing bail, and with each remand this necessity for production of evidence of guilt becomes stronger. *Per* TURNER, C. J., *Punnusami Chatti* v. *Queen*, I. L. R. 6 Mad. 69. If the offence is bailable, and the accused is prepared to furnish such bail as appears to the Court reasonable, this Code (s. 496, *infra*) directs that he *shall* be released on bail.

Record.—Chapter XXV (ss. 353—365) deals with the mode of taking and recording evidence in inquiries and trials. The taking of evidence by Presidency Magistrate is specially provided for by s. 362.

Defence.—Section 340 provides that every person accused before a Criminal Court may of right be defended by a pleader. The term "pleader" means a pleader authorized under any law for the time being in force to practice in any Court, and includes (1) an Advocate, a Vakil and an Attorney of a High Court, and (2) any Mukhtar or other person appointed with the permission of the Court to appear in any proceeding in any Court.—*s.* 4 (*n*), *supra*. The law now in force as to legal practitioners is the Legal Practitioners' Act (XVIII of 1879) as amended by Act IX of 1884.

Prosecutor.—Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of Police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council; but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission. Any person conducting the prosecution may do so personally or by a pleader.—*S.* 495, *infra*. But an officer of Police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.—*Ibid.*

Duty of Prosecution.—Production of Evidence.—In conducting a prosecution, all the persons who are alleged or known to have knowledge of the facts ought to be brought before the Court and examined. *Emp.* v. *Ram Sahai Lall*, I. L. R. 10 Cal. 1070. In that case the Sessions Judge gave it as a sufficient reason for the non-production of certain witnesses before the Sessions Court that they had been examined by the committing Magistrate against the express wish of the Police-officer in charge of the prosecution. On appeal, however, the High Court thought that was not a valid reason. In the case of *Dhunnoo Kazi*, I. L. R. 8 Cal. 121, WILSON, J., said: "The prosecutor is not free to choose how much evidence he will bring before the Court. He is bound to produce all the evidence in his favour directly bearing upon the charge. It is *primâ facie* his duty accordingly to call those witnesses who prove their connection with the transactions in question, and also must be able to give important information. The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. (See *Emp.* v. *Kally Prosonno Dass*, I. L. R. 10 Cal. 245: *Emp.* v. *Stanton*, I. L. R. 14 All. 521: *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6.) If such witnesses are not called without sufficient reason being shown (and the mere fact of their being summoned for the defence seems to us by no means necessarily a sufficient reason), the Court may properly draw an inference adverse to the prosecution. There is no corresponding inference against the accused. He is merely on the defensive, and owes no duty to anyone but himself." See further notes to ss. 244, 254 and 492 under this heading.

Sessions Cases.—In the case of *Reg.* v. *Kishto Doba*, 14 W. R. 16, E. JACKSON, J., said: "I think every inquiry should be made previous to commitment to ascertain not only whether there was presumption of the guilt of the accused, but also whether he was innocent. It is the duty of the Police and the Magistrate not only to bring the parties suspected to trial but also to ascertain whether the suspected can clear themselves from the offence of which they are accused * * * If the result of the inquiry into the defence leaves the matter in doubt, it is the duty of the Magistrate to commit and leave the Sessions Court to decide which is the true story." But see *Emp.* v. *Namdev Satvaji*, I. L. R. 11 Bom. 372.

Under s. 212 the Magistrate may, in his discretion, summon and examine any witnesses in the list whom the accused wishes to be summoned on his trial.

When accused person to be discharged.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Discretionary Power of Magistrates.—The object of the law in providing that the inquiry shall be held by the Magistrate, before the accused has to undergo a trial in the Court of Session, seems to be to prevent the commitment of cases in which there is no reasonable ground for conviction. This provision of the law is calculated, on the one hand, to save the accused from prolonged anxiety of undergoing trials for offences not brought home to them; and, on the other hand, to save the time of the Court of Session from being wasted over cases in which the charge is obviously not supported by such evidence as could justify a conviction. The discretionary power given to Magistrates extends

to weighing of evidence, and the expression "sufficient grounds" must be understood in a wide sense. This power, however, should not be exercised without due caution.—*Lachman* v. *Juala*, I. L. R. 5 All. 161.

If, in the opinion of the Magistrate, there are sufficient grounds for committing the accused for trial, a commitment ought to be made. "Sufficient grounds" are not defined, but where credible witnesses make statements which, if believed, would sustain a conviction, the Magistrate ought to commit.—*Emp.* v. *Namdeo Satvaji*, I. L. R. 11 Bom. 372. See *Reg.* v. *Doba*, 14 W. R. Cr. 16. According to English law a commitment ought to be made whenever one or two credible witnesses give evidence showing that the accused has perpetrated an indictable offence (see Hale's Pleas of the Cr. II, 121; Hawkins' Pleas of the Cr., Ch. XVI; *Cox* v. *Coleridge*, 1 B. & C. 37, 43, 40), and the sort of *primâ facie* case which warrants a committal is defined by Stat. 11 and 12 Vic. Cap. 42, s. 25, as one "that is sufficient to put the party on his trial for an indictable offence."

In a trial before a Deputy Commissioner invested with special powers under s. 30, the accused was charged with culpable homicide not amounting to murder under s. 304 of the Indian Penal Code, and there was some evidence which would, if believed, have supported a charge of murder, but the Court did not consider that evidence sufficiently strong to warrant such a charge, and proceeded to try the case as upon a charge under s. 304 of the Indian Penal Code only—a charge which the Deputy Commissioner was empowered to try. The Court said: "Section 209 empowers a Magistrate holding an inquiry to try the case himself, if he thinks that only an offence within his jurisdiction has been committed. This is the view which we understand the Deputy Commissioner has taken, and we cannot, therefore, hold that it was not authorised by law, or that he had acted without jurisdiction, merely because there is some evidence which, if believed, would substantiate the charge of murder, an offence beyond his jurisdiction. At the same time, we think, this course should very rarely, if ever, be taken by an officer invested with special powers under ss. 30 and 34 of the Criminal Procedure Code, and that in adopting it, any such officer incurs a very grave responsibility."—*Emp.* v. *Parmanund*, 13 C. L. R. 375: (S. C.) I. L. R. 10 Cal. 85.

So, in the case of *Lachman* v. *Juala*, I. L. R. 5 All. 161, MAHMOOD, J., held, that a Magistrate inquiring into a case exclusively triable by the Court of Session is not bound to commit the accused for trial where the evidence for the prosecution, if believed, would end in a conviction, but that he is competent, if he discredit such evidence, to discharge the accused. The High Court would only interfere under s. 437 in such a case, if it came to the conclusion that the Magistrate had illegally and improperly underrated the value of evidence.—*Puran Telse* v. *Bhuthoo Dhome*, 9 W. R. Cr. 5.

Discharge.—An order of discharge does not amount to an acquittal for the purposes of s. 403, *infra*. As to the effect of a discharge see further.—*Venu* v. *Coorya Narayan*, I. L. R. 6 Bom. 376.

Examination of Accused Persons.—In inquiries by Magistrates into cases triable by Courts of Session or High Courts, the Magistrate may, under s. 209, examine the accused "for the purpose of enabling him to explain any circumstances appearing in the evidence against him."

Under this section, also, Magistrates have power, in the trial of warrant cases, to examine the accused. Similar power is given to the High Courts and Courts of Session by s. 289. It was not, however, intended by the Legislature, in providing for the examination of the accused, that the power should be used as an instrument against the accused for the purpose of obtaining admissions of guilt from him or with a view to supplement the evidence for the prosecution.—*Reg.* v. *Diaz*, 3 Bom. Cr. Cas. 51.

The provisions of s. 342 should be carefully borne in mind. That section is as follows:—"For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the Jury (if any) may draw such inference from such refusal or answers as it thinks just. The answers given by the accused may be taken into consideration in such inquiry for trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed. No oath shall be administered to the accused."

As to reading the examination of the accused taken before the Magistrates at the Sessions trial, see s. 287, *post*.

It is not competent to the Court, under s. 342 or ss. 209 or 253, to subject the accused to cross-examination. The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself; but only for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that those facts should not stand against him unexplained.—*In re Chinibash Ghose*, 1 C. L. R. 436: *Virabhadria Goud*, 1 Mad. H. C. R. 190: *Queen* v. *Bholanath Sein*, 25 W. R. 57: *Queen* v. *Sheik Bazu*, 8 W. R. (F. B.) 47: *Emp.* v. *Behari Lall Bose*, 6 C. L. R. 431: *In re Noor Bux Kazi*, I. L. R. 6 Cal. 279: (S. C.) 7 C. L. R. 385: *Pro.*, 1 Mad. H. C. R. 190; *Weir*, p. 42. In the case of *In re Hossein Buksh Sheik*, I. L. R. 6 Cal. 96: (S. C.) 6 Cal. 627, PRINSEP, J., said: "In permitting a Sessions Judge to examine an accused person from time to time during a trial, the law does not contemplate that he should commence a trial with a strict examination of a prisoner, in the manner of the cross-examination of an adverse witness by Counsel. . . . By exercising the power allowed by s. 250, the Sessions Court is not to establish a Court of Inquisition, and to force prisoner to convict himself by making some criminating admissions after a series of searching questions, the exact effect of which he may not readily comprehend. The real object is to enable a Judge to ascertain from time to time from a prisoner, particularly if he is undefended, what explanation he may desire to offer regarding any fact stated by the witness, or, after the close of the case, how he can meet what the Judge may consider to be damnatory evidence against him. In one of these cases now before us, we observe that the Judge was engaged, during the whole of the first day, in

examining the accused. In like manner, in the second case, he examined the accused at considerable length before the case for the prosecution was opened. Such proceedings appear to us to be an abuse of the power given under the law."

Statements by Accused.—It is a matter of discretion for the Magistrate himself to judge whether, during the inquiry before him, it is right and proper that the accused should be examined or not, and it is very undesirable that the accused should be examined, when the Magistrate is satisfied that the evidence adduced by the prosecution does not disclose any proper subject of criminal charge against him.—*In re Shama Sankar Biswas*, 1 B. L. R. S. N. xvi. But it is not competent to the Court to refuse to allow the accused to make a statement.—*In re Abdul Gaffoor*, 10 C. L. R. 54.

The statements made by an accused person at his trial are to be taken down *in extenso* precisely as made, and, if practicable, in the language in which they are made.—*Mad. H. C. Pro., 13th May* 1867; *Weir*, p. 43.

A confession recorded by a Magistrate having jurisdiction is to be treated as an examination under s. 342, notwithstanding that the prisoner or prisoners may have been brought before the Magistrate before the conclusion of the Police investigation.—*Emp.* v. *Imamram Singh*, I. L. R. 5 Cal. 937.

Section 439, *infra*, provides that on examining any record, under s. 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under s. 203, or into the case of any accused person who has been discharged.

Under s. 435, the High Court or any Court of Session, or District Magistrate, or any Subdivisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court. If any Sub-divisional Magistrate, acting under that section, considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Improper Discharge.—In the case of *In re Mohesh Mistree*, I. L. R. 1 Cal. 282: (S. C.) 25 W. R. Cr. 30, 80, it was held under the former Code, dissenting from a decision of the Bombay High Court in the case of *Sidya bin Satya*, referred to in Mr. Justice Prinsep's fifth edition of the Criminal Procedure Code, p. 269, under s. 295 of Act X of 1872, that where a case of improper discharge came before a District Magistrate, the proper and only course for him was to report the case for orders to the High Court, which, if of opinion that the accused was improperly discharged, might, under s. 297, direct a re-trial. See *In re Dibobur Dutt*, I. L. R. 4 Cal. 647. Apparently now the procedure in warrant-cases, which ought ordinarily to be followed in such a case, is that laid down by ss. 436, 437, and 438. The Court of Session or District Magistrate would have power, under s. 438, *infra*, to report the case to the High Court.

The High Court is not debarred from interfering in cases requiring the exercise of discretion, if it appears on the face of the proceedings that the Magistrate has exercised no discretion, or has exercised his discretion in a manner wholly unreasonable.—*In re Juggut Chunder Chuckerbutty*, I. L. R. 2 Cal. 110.

When, on examining the record of any case under s. 435 or otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may, thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged: Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made:

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.—*S.* 436.

Where a Magistrate of the first class discharged under this section a person who was charged with an offence exclusively triable by the Court of Sessions, and the District Magistrate directed him, under s. 436, to commit the accused to the Court of Sessions, and a commitment was made, but the Sessions Judge, under s. 215, referred the case for orders to the High Court, the commitment was held to be good.—*Emp.* v. *Pirya Gopal*, I. L. R. 9 Bom. 100.

A charge of assault and theft should not be dismissed for default of the complainant's attendance.—*Reg.* v. *Jodhoo Paharee*, 1 W. R. Cr. 25.

Where an accused, who has been duly summoned or arrested under a warrant, is present to meet any charge, and no evidence is forthcoming against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the inquiry under the preceding section, the Magistrate is not only authorised, but he is empowered, and, in fact, required, to discharge such accused person.—*Tuky Mahomed Mundul* v. *Kisto Nath Roy*, 15 W. R. Cr. 53.

The following instructions as to cases where death has ensued, but it is doubtful whether the offence of culpable homicide has been committed, have been issued by the Calcutta High Court:—In cases where death appears to have resulted from injuries voluntarily inflicted by the party accused, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver charge, and convict of hurt or grievous hurt only, unless they are quite clear that there is no sufficient evidence to warrant a commitment to the Sessions for murder, or culpable homicide not amounting to murder.—*Cal. H. C. C. O., No.* 9 *of 6th September* 1869; *Wilkins*, p. 112.

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

When charge is to be framed

As soon as the charge has been framed, it should be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

Charge to be explained, and copy furnished to accused

The duty of a committing officer is to ascertain whether, by the evidence for the prosecution, a *primâ facie* case has been made out against the accused.—*Reg.* v. *Maha Singh*, 3 All. 27.

" If such a case is made out or if in the opinion of the Magistrate there are sufficient grounds for committing the accused, the Magistrate is bound to commit him.—*Emp.* v. *Namdeo Satvaji*, I. L. R. 11 Bom. 372. According to English law a commitment ought to be made whenever one or two credible witnesses gives evidence showing that the accused has committed an indictable offence (see Hale's Pleas of the Cr. II, 121, Hawkins' Pleas of the Cr., Ch. XVI: *Cox* v. *Coleridge*, 1 B. and C., 37,43,46,) and the sort of *primâ facie* case is defined by 11 and 12 Vict. Cap. 42, s. 25, as one " that is sufficient to put the party on his trial for an indictable offence." " Sufficient grounds for committing " under the Code are manifestly not identical with grounds for convicting, since taken in that sense the provisions of the Code would enable the Magistrate virtually to supersede the Court of Session to which the cognizance of the case for actual trial belongs.—*Emp.* v. *Namdeo Satvaji*, I. L. R. 11 Bom. 372.

As to the discretionary power of Magistrates, see further notes to s. 209.

It was held by SARGENT, C. J., and BAYLEY, J. (SCOTT, J., *dissentiente*), that in the Code generally the word " charge " is used as a statement of a specific offence and not as indicating the entire series of offences of which a prisoner is accused.—*Queen* v. *Appa Subhana Menâre*, I. L. R. 8 Bom. 200. In Form No. 28 in the second Schedule, the term is undoubtedly used as containing several heads of offences, but the Court was of opinion, in the case quoted, that that exception could not outweigh the conclusion to be drawn from the body of the Code itself. See further upon this point, ss. 221, 226, and 227.

Section 347, *post*, provides :—" If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings, and commit the accused under the provisions hereinbefore contained. If such Magistrate is not empowered to commit for trial, he shall proceed under s. 346."

In framing alternative charges of giving false evidence, the charges must show clearly the statements alleged to be false ; see *Cir. Or., No. 3 of* 1866, 5 W. R. Cr. Cir., p. 2 : *Reg.* v. *Sounder Mohooree*, 5 Wym. Cr. Rul. 33. See ss. 221 and 223, *Illustration* (*b*).

When there has been a riot and fight between two parties, the members of each should be tried separately, and it is wrong to commit the members of both parties for trial together upon joint charges as if they had had one common object.—*Queen* v. *Sheikh Bazu*, 8 W. R. Cr. 47 : (S. C.) 4 Wym. Cr. Rul. (F. B) 13 : *Queen* v. *Durzoolla*, 9 W. R. Cr. 33.

Two or more prisoners committing acts of perjury on different occasions ought not to be tried on one charge. Where two prisoners were alleged to have given false evidence in a case, and were tried on one charge, it was said that the circumstance that the evidence related in both cases to the same subject-matter, or even that the false statements were similar, made no difference in principle.—*Cal. H. C. C. C.*, *20th July* 1868 : 2 W. R C.L. 21. See *Emp.* v. *Niaz Ali*, I. L. R. 5 All. 17, which has been overruled by *Emp.* v. *Ghulsi*, I. L. R. 7 All. 44. See also *Emp.* v. *Ramji Sajabarao*, I. L. R. 10 Bom. 124.

Some of several persons implicated in the commission of the same offence should not be tried by the Magistrate, whilst others are committed to the Sessions.—When several persons are accused of the commission of the same offence, it would be obviously inconvenient, if a Magistrate were to punish some and commit others to a Court of Session ; and as the Code does not seem to contemplate such procedure, the Magistrate should, if he considers the case to be one for the Sessions, commit all those concerned for trial before that tribunal.—*Cal. H. C. C. O., No. 100 of 27th May* 1862 ; *Wilkins*, p. 108.

Chapter XIX (ss. 221—240) deals with the form, joinder, and withdrawal of charges. A number of forms of charges will be found in Schedule V, XXVIII, *post*. As to the persons who may be charged jointly, see s. 239 and the note thereto. As to trial of a European British subject accused jointly with non-European British subjects see ss. 214 and 452.

Where any question arises as to the sanity of an accused person, recourse must be had to Chap. XXXIV, *post*.

When a commitment is made, the Magistrate should notify the fact and transmit the following papers to the Court of Session :—

(*a*) a copy of the charge ;
(*b*) calendar ;
(*c*) reasons for commitment ;
(*d*) record of original inquiry.

Besides these, any weapons or other articles of property necessary to be produced in evidence must be sent, or be forthcoming at the trial.—*Smyth*, p. 95.

List of witnesses for defence on trial

211. The accused shall be required at once to give in orally or in writing a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence (*In the matter of Mohima Chandra Shah*, 6 B. L. R. Appx. 78); and the refusal to summon witnesses cited by the accused on the ground of their being implicated in the charge, vitiates the trial and conviction.—*Ram Shahai Chowdhry* v. *Sanker Bahadur*, 6 B. L. R. Appx. 65.

When a prisoner gives in a list of the witnesses he wishes to summon after his case has been committed, the Magistrate is bound to exercise his discretion upon the point, and to state whether he will summon the witnesses or not, and he ought to state his reasons for not doing so. If he thinks the witnesses were included for the purpose of delay, he should proceed under s. 216, *infra*. See *Reg.* v. *Rajcoomar Mookerjee*, 16 W. R. Cr. 14.

There is no reason to refuse an application for summons simply because a large number of witnesses is mentioned therein.—*Hurendra Narain Singh Chowdhry* v. *Bhobani Prau Baruani*, I. L. R. 11 Cal. 762, p. 766.

Section 231 provides that whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re call or re-summon, and examine with reference to such alteration, any witness who may have been examined; and s. 291, that the accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in ss. 211 and 231, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

So, a prisoner is entitled, as a matter of right, to have any witnesses named in the list which he delivers to the Magistrate summoned and examined (*Queen* v. *Pronunno Coomar Moitro*, 23 W. R. Cr. 56: *Queen* v. *Bhoobun Isher Gosamee*, 2 W. R. Cr. 6: *Queen* v. *Abdool Satar*, 3 W. R. Cr. 30); but he is not entitled as of right to have witnesses not named by him before the Magistrate summoned at the Sessions trial.—*Queen* v. *Boidnath Singh*, 3 W. R. 29.

A Magistrate is at liberty, under s. 216, to decline to summon the persons named on the list when the prisoner declines to satisfy him that they are material witnesses, but he ought to fix the amount which he considers necessary to defray the cost of the attendance of the persons named, and intimate to the prisoner his readiness to issue summonses on that amount being deposited.—*In re Subharaya Mudali*, 4 Mad. H. C. R. 81.

The following rule for regulating the practice of the subordinate Courts has been promulgated by the Judicial Commissioner of British Burmah:—Whenever an accused person is committed for trial before the Court of Session or High Court, the Magistrate shall, after the charge has been read and explained to the accused person, require him to give in a list of witnesses as provided in s. 200 of the Code of Criminal Procedure (Act X of 1872) (see ss. 211, 212, and 213 of this Code), and the Magistrate shall record the fact of such requirement having been made, and shall record the list of witnesses, if any, so named; and also the names of such witnesses as, under s. 359 of the said Code (s. 216 of this Code), he may decline to summon and the reason for refusal. Such record shall, with the other proceedings, be sent to the Court to which the accused person has been committed for trial.—*Burmah Gazette*, 1878, p. 139.

See ss. 231 and 291, *post*, as to the right of the accused to have witnesses summoned.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

See s. 216, *infra*.

Order of commitment.

213. When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reason for such commitment.

If in the opinion of the Magistrate there are sufficient grounds for committing, he is bound to commit the accused for trial.—*Emp.* v. *Namdev Satvaji*, I. L. R. 11 Bom. 372. See further on this point, notes to ss. 209, 210, *supra*.

The signature of the Magistrate to a warrant of commitment should not be affixed by a stamp. —*Subramanya* v. *Ayyar*, I. L. R. 6 Mad. 396.

By C. O. No. 8 of 18th August 1882, all judicial officers were reminded that in case of all documents which are required by law to be signed, the impression of a stamp having the officer's name is insufficient and illegal.—*Wilkins*, pp. 119, 120.

Where a Magistrate, after examining four witnesses for the prosecution, discharged the accused, but subsequently, on becoming aware that there was a fifth witness present, the Magistrate cancelled his order of discharge, took further evidence, and committed the accused for trial to the Court of Session, it was held, that the commitment was good.—7 *Mad. H. C R. Appx. xi.*

In preparing 'the reasons for commitment,' the committing Magistrate should marshal the evidence in the order in which it should come under judicial consideration—

(*a*) the medical evidence, if any ;

(*b*) evidence of the identity of the body or property, and the direct evidence of the preparation of the crime ;

(*c*) evidence to the discovery of the offender and his arrest ;

(*d*) circumstantial and other evidence.

—*Smyth*, p. 95.

A commitment once made by a competent Court can be quashed by the High Court only, and only on a point of law.—*S.* 215, *post.*

In framing alternative charges of giving false evidence, the charges must show clearly the statements alleged to be false : see *Cir. Or. No.* 3 *of* 1866 : 5 W. R. Cr. Cir., p. 2 : *Reg.* v. *Soonder Mohooree*, 6 Wym. Cr. Rul. 33. See *Emp.* v. *Ghulet*, I. L. R. 7 All. 44.

When there has been a riot and fight between two parties, the members of each should be tried separately, and it is wrong to commit the members of both parties for trial together upon joint charges as if they had had one common object.—*Queen* v. *Sheikh Bazu*, 8 W. R. Cr. 47 : (8. C.) 4 Wym. Cr. Rul. (F. B.) 13 : *Queen* v. *Durzoolla*, 9 W. R. Cr. 33. See *Buchu Mullah* v. *Sia Ram Sing*, I. L. R. 14 Cal. 358.

In prosecutions for giving false evidence under s. 193 of the Penal Code, it was held, the case of each person accused should be separately inquired into and, if committed for trial, tried separately. It is wholly erroneous to include them in one joint charge.—*Emp.* v. *Niaz Ali*, I. L. R. 5 All. 17, overruled on another point by *Emp.* v. *Ghulet*, I. L. R. 7 All. 44. See *Reg.* v. *Zamseran*, 6 W. R. Cr. (F. B.) 65 : *Reg.* v. *Mahomed Hoomayoon Shaw*, 13 B. L. R. 324.

So, in Calcutta it was laid down that two or more prisoners committing acts of perjury on different occasions ought not to be tried on one charge. Where two prisoners were alleged to have given false evidence in a case, and were tried on one charge, it was said that the circumstance that the evidence related in both cases to the same subject-matter, or even that the false statements were similar, made no difference in principle.—*Cal. H. C. C. L.*, 20*th July* 1808 ; 2 W. R. C. L. 2.

The duty of a committing officer is to ascertain whether, by the evidence for the prosecution, a *primâ facie* case has been made out against the accused.—*Reg.* v. *Muha Singh*, 3 All. 27.

When several persons are accused of the commission of the same offence, it would be obviously inconvenient if a Magistrate were to punish some and commit others to a Court of Session ; and as the Code does not seem to contemplate such procedure, the Magistrate should, if he considers the case to be one for the Sessions, commit all those concerned for trial before that tribunal.—*Cal. H. C. O. O., No.* 100 *of* 27*th May* 1862 ; *Wilkins*, p. 108.

See note to s. 210, *supra.*

Person charged outside Presidency-towns jointly with European British subject.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried before High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Under s. 336 the High Court may direct that all European British subjects and persons *liable* to be tried by it under this section who have been committed for trial by it within certain specified districts or during specified periods of the year, shall be tried at the ordinary place of sitting of the Court or direct that they shall be tried at a particular place.

As to the sittings of the Court of the Recorder of Rangoon, see Act XI of 1889, s. 37.

European British subjects where the offence which appears to have been committed is punishable with death or with transportation for life must be committed direct to the High Court.—S. 447. In other cases, see ss. 448 and 449.

As to whether there must be a joint trial or separate trials, see s. 452, *post.*

Quashing commitments under section 213 or 214.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

As to what Magistrates are empowered to commit, see s. 206 and note thereto. Under s. 532, *infra*, a commitment made by a Magistrate not duly empowered may be accepted by the Court to

which the commitment has been made, if the accused has not been prejudiced. See *Emp.* v. *Pirya Gopal*, I. L. R. 9 Bom. 100 : *Emp.* v. *Lachman Singh*, I. L. R. 2 All. 308.

In the case of *Atim Mandle*, 11 C. L. R. 55, a commitment made by a Magistrate without jurisdiction was held to be void, and it was therefore considered that it was not necessary to refer the matter to the High Court to have it set aside.

In the case of *Queen* v. *Kanjamalai Padayachi*, I. L. R. 6 Mad. 372, an accused person had been discharged by a Subordinate Magistrate, and the District Magistrate directed the committal of the accused to the Court of Sessions under s. 436, *post*, without calling upon him to show cause why he should not be committed. The High Court set aside the order of committal, and the commitment made thereunder as illegal. Want of evidence is sufficient ground for quashing a commitment.—*Emp.* v. *Narotam Das*, I. L. R. 6 All. 98.

Where an accused was committed by a Magistrate of the first class for trial by the Sessions Court, on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or Joint Sessions Judge, it was held, that the commitment could not be quashed, there being no error in law, and that the case must, therefore, be transferred for trial to another Court of Session.—*Reg.* v. *Gajt Kom-Ranee*, I. L. R. 1 Bom. 311. See *Emp.* v. *Jangibir*, I. L. R. 4 All. 150.

Where a Magistrate, after examining four witnesses for the prosecution, discharged the accused, but subsequently, on becoming aware that there was a fifth witness present, cancelled his order of discharge, took further evidence, and committed the accused for trial to the Court of Session, it was held that the commitment was good.—7 *Mad. H. C. R. Appx. xi.*

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed :

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly :

Refusal to summon unnecessary witness unless deposit made.

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may, before summoning him, require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

As to process for compelling the production of evidence on the trial of warrant-cases at the instance of the accused, see s. 257, *infra*.

See notes to s. 291, *infra*.

In the case of *Emp.* v. *Rajcoomar Singh*, I. L. R. 3 Cal. 573 : (S.C.) 2 C. L. R. 62, the following remarks were made by JACKSON, J. :—"I understand s. 359 (of Act X of 1872) to mean that if, among the persons named by the accused as witnesses to a defence, the Magistrate considers that any particular witness is included for the purpose of vexation and delay, he is to exercise his judgment and inquire whether the witness is material. I have never heard it was intended by that provision to enable the Magistrate to inquire generally into what the defence of the accused is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused."

A Magistrate is at liberty, under this section, to decline to summon the persons named on the list when the prisoner declines to satisfy him that they are material witnesses, but he ought to fix the amount which he considers necessary to defray the cost of the attendance of the persons named, and intimate to the prisoner his readiness to issue summonses on that amount being deposited.—*In re Subharaya Mudali*, 4 Mad. H. C. R. 81.

A Magistrate is not at liberty to refuse to summon a witness tendered by an accused person, except upon the grounds specified in this section. If he does refuse, he must proceed under the section, and record his reasons.—*In re Deola Mahton* v. *Shee Dyal Koeri*, I. L. R. 6 Cal. 714 : *In re Rajah of Kantit*, I. L. R. 8 All. 668. The fact that the accused had, at the close of his case, stated that he did not wish to call the witnesses whom he afterwards tendered, is no reason for refusing to summon them to meet fresh evidence taken by the Magistrate.—*In re Deola Mahton* v. *Shee Dyal Koeri*, I. L. R. 6 Cal. 714.

Under s. 257, *post*, in warrant-cases, if the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay,

or for defeating the ends of justice. Such ground shall be recorded by him in writing. The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

When the Magistrate has ordered a summons to issue for the attendance of a witness for the defence, and the witness does attend after due service of the summons, the Magistrate cannot refuse to issue a fresh summons on the ground that there has been some delay in the service of the summons.—*Emp.* v. *Ruknuddin*, I. L. R. 4 All. 53. In such a case, s. 237 was held not to apply.—*Ibid.*

Under s. 231, *post*, whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon, and examine, with reference to such alteration, any witness who may have been examined; and s. 271 provides that, in trials before High Courts and Sessions Courts, the accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in ss. 211 and 231, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Bond of complainants and witnesses.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Prosecutors and witnesses should be "bound over to appear" at the next Criminal Sessions commencing on . . . . . .

It will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to witnesses, so to arrange the coming on of cases before the Court of Session, that such witnesses may not be brought from their homes to the Sudder Station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.—*Wilkins*, p. 111.

Commitment when to be notified.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge, &c., to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry, and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

English translation to be forwarded to High Court.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

For form of notice of commitment by Magistrate to Government Pleader, see Sched. V, No. 27.

When a commitment is made to the Court of Session, the record of the Magistrate is to include—

First—the proceeding by which the case is originated in the Magistrate's Court;

Secondly—all papers showing the steps taken under the authority of the Magistrate upon the complaint; the summons, if any, and its return; the warrant and the return, or other documents showing how and when it has been executed; also any search-warrant, and the report showing how it has been executed;

Thirdly—the report, if any, on such inquiry as that under ss. 174 and 202;

Fourthly—the orders, if any, sanctioning the prosecution, when such sanction is necessary;

Fifthly—the order, if any, withdrawing the case from one Court or transferring it to another Court. The papers on the record of the Magistrate are not evidence in the Court of Session either for or against the accused, except so far as they are formally put in at the trial and accepted by the Court as evidence.—*Cal. H. C. C. O., No.* 1 *of 23rd January* 1872; *Wilkins*, p. 109.

The following further directions for guidance of Magistrates in making commitments to the Court of Session have been published by the Calcutta High Court;

(*a*) Whenever a case is committed to the Court of Session, the names of the witnesses shall be entered on the back of the copy of the charge which has to be forwarded to that Court under s. 198 (s. 218) of the Code of the Criminal Procedure. This copy shall be placed by the Sessions Judge at the beginning of the record of the trial in his Court.

(*b*) The observations or judgment of the Magistrate in committing the prisoner shall always go up in original with the record, and they, with the original depositions, should be read by the Judge before the trial. Abstracts of the evidence are considered unnecessary, and they are at times misleading.

(*c*) Magistrates should be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing Sessions in order to avoid the needless detention of accused persons for prolonged periods.

(*d*) Whenever a commitment is made, intimation shall be immediately given to the Court of Session, through the Magistrate of the District, by a letter in the following form :—

FROM

THE MAGISTRATE OF.....

TO

THE SESSIONS JUDGE OF.....

SIR,—I beg to report that I have this day committed, to take his trial before the Court of Session, the person named in the margin, on the charge specified below.

I have, &c.,

A. B.,

Magistrate (*as the case may be*).

(*Charges should follow here*).

(*e*) It will be unnecessary for the Court of Session to send any answer fixing a date for the trial, but the Judge will be guided by the information which he thus receives in estimating the time which it will be necessary to devote to the Criminal Sessions, and consequently at what period he will be able to take up civil business thereafter.

(*f*) Prosecutors and witnesses should be bound over to appear "at the next Criminal Sessions commencing on

"

(*g*) It will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session that such parties may not be brought from their homes to the Suddor Station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

(*h*) The directions herein contained for committing Magistrates are to be observed, so far as they are applicable, by Civil Courts and other authorities committing persons for trial at the Sessions.

(*i*) At each periodical Sessions all persons awaiting trial shall be brought before the Judge in open Court; and, if the Government Prosecutor is not prepared to go to trial in any particular case, he should be required to show cause properly supported why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown.

(*j*) Sessions Judges are reminded that trial must not be too lightly postponed. It cannot be too often pointed out that a further detention of an accused person in jail for perhaps two months is in itself no trival infliction, and is only justified when there is apparently a good case against the prisoner, and when the Judge is satisfied that, for the ends of justice, it is necessary to postpone the trial.—*Cal. H. C. C. O., No.* 5 *of* 14*th October* 1879; *Wilkins*, pp. 101—3.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

After a Sessions trial has commenced the Judge has no authority to direct the committing Magistrate to call additional witnesses, as the Magistrate's power to do so ceases with the commencement of the trial; *Hasan*, Punj. Rec., 1888, p. 59.

Under s. 548, any person effected by a judgment or order passed by a Criminal Court is entitled to have a copy of the Judge's charge to the Jury, or of any order or deposition or other part of the record, on payment for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Custody of accused pending trial.

220. Until, and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

As to bail, see Chap. XL, and as to place of imprisonment, see s. 541, *infra*.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

In the recent case of *Queen* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200, the question as to the meaning of the term "charge," as used in the Code, was discussed upon a case reserved by SCOTT, J., under s. 434 of the Code. SARGENT, C. J., and HAYLEY, J., held, that the term is used throughout the Code except in Form 28, Sched. II, as meaning the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused. SCOTT, J., dissented. He was of opinion that the term was used both as indicating the whole series of *counts* or heads of charge, and also as indicating a charge of one specific offence; and that in s. 227, *post*, it was used in the former sense. See further notes to ss. 226, 227, 228, 236, and 237.

MR. JUSTICE STEPHEN, the framer of the Code of 1872, in his History of Criminal Law, Vol. III, p. 337, says, in a note on ss. 221, 240 of the present Code :—"I drew these sections in the Code of 1872. They are re-enacted with little alteration." And then he goes on to say: "The provisions relating to 'charges' are intended to provide that 'the charge' shall give the accused full notice of the offence charged against him, but that the only result of any defect in the charge shall be an amendment on terms as to delay or a new trial, if the accused seems to have been misled."

It is quite clear from this passage, SCOTT, J., considered, that the intention of the Legislature was to permit all amendments which would not prejudice the prisoner in his defence. In other words, prejudice to the prisoner was intended for the future to be the test of admissibility or rejection of proposed amendments.—*Queen* v. *Appa Subhana Mendre*, I. L. R. 8 Bom., p. 213. See *Emp.* v. *Gordon*, I. L. R. 9 All. 325.

Under s. 537 *no finding*, sentence or order is to be reversed or altered on appeal or revision on account of any error, omission or irregularity in the charge, unless there has been a failure of justice. See note to that section, *post*.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Previous conviction when to be set out.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(*a*) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in ss. 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to s. 300, or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(*b*) A is charged, under s. 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by *means of an instrument for shooting*. This is equivalent to a statement that the case was not provided for by s. 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d*) A is charged, under s. 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Para. 2 and *Illustration* (*c*)—Read in connection with s. 223, *Illustration* (*b*).

Para. 5—Compare s. 105 of the Evidence Act (I of 1872), which provides:

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. *Illustrations.* "(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A. "(*b*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A. "(*c*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by s. 335, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under s. 325. The burden of proving the circumstances bringing the case under s. 335 lies on A."

Previous Convictions:—As to proving previous convictions, see s. 310, *post*, as amended by s. 9 of Act III of 1891, and ss. 43 and 54 of the Evidence Act as amended by the same Act.

If it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous conviction in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after.—*Queen* v. *Rajcoomar Bose*, 19 W. R. Cr. 41; and see *Queen* v. *Ewan Chunder Dey*, 21 W. R. Cr. 40. As to cases in which the accused is liable under the Whipping Act, see *Badiya* v. *Queen*, I. L. R. 5 Mad. 158; and *Mad. H. C. Cir. Order, No.* 2686, *dated* 20th *December* 1881. A statement in a count that, at the time when the prisoner committed the offence, he had been previously convicted of offences punishable under the Indian Penal Code, is not a sufficient compliance with the provisions of this paragraph.—*Queen* v. *Shaik Jakir*, 22 W. R. Cr. 30.

The previous conviction should form the subject of a separate head of the charge, and to this the accused person should only be required to plead if he has been convicted of the offence for which he has been under trial. If he admits the previous conviction, that will suffice; but if he denies it, it should be proved by recording the finding in the previous case and the evidence of the jailor or other person as to the identity of the accused with the person previously convicted.—*Bom. H. C. Cir.*, 44; see also *Mad. H. C. Pro.*, 23*rd September* 1878; *Weir*, p. 4.—See *Emp.* v. *Dorasami*, I. L. R. 9 Mad. 284, as to the necessity of a separate charge.

For forms of charges, see Sched. V, No. XXVIII.

In charging a previous conviction, the charge should run—

"That you, , before the committing of the said offence, were committed on the day , in Calendar No. of , on the file of the , of an offence punishable, under Chapter of the Penal Code, with imprisonment for a term of three years, to wit the offence of , which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Indian Penal Code and within the cognizance of ." —*Mad H. C. Pro.*, 17*th April* 1868; *Weir*, p. 4.

Particulars as to time, place, and person.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

In the case of *Behari Mahton* v. *Emp.*, I. L. R. 11 Cal. 106, where the foundation of the charges lay in the fact that the accused was alleged to have been a member of an unlawful assembly, the Court (MITTER and NORRIS, JJ.) said: "An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him. Unless he has this knowledge, he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to implicate an accused person for acts not committed by himself but by others with whom he is in company."

So, in the case of *Emp.* v. *Khairati*, I. L. R. 6 All. 204, where a person was tried for an unnatural offence and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom the offence was committed, and without any proof of these particulars, the facts proved against him only being that he habitually wore women's clothes, exhibited physical signs of having committed the offence,—it was held that the conviction was not sustainable. See the remarks of STRAIGHT, J., p. 207.

As to the particulars which ought to be inserted in the charge, see also *Emp.* v. *Fakirapa* I. L. R. 15 Bom. 491.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

See remarks of STRAIGHT, J., in the case of *Emp.* v. *Khairati*, I. L. R. 6 All. 204 : and *Emp.* v. *Fakirappa*, I. L. R. 15 Bom. 491.

Words in charge taken in sense of law under which offence is punishable

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Act XVIII of 1862, s. 28.

In the case of *Emp.* v. *Baban Khan*, I. L. R. 2 Bom. 142, where the accused was charged under s. 217 of the Penal Code, and the charge did not distinctly state what the direction of the law was which he had disobeyed and how he had disobeyed it, and he was convicted, it was held, that the charge, having been expressed in vague terms, the prosecution, on appeal, should be limited to the particular sense in which the charge was understood at the trial.

Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Illustrations.

(*a*) A is charged, under s. 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word 'fraudulently' being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowledge to which of them the charge referred, A offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

The term 'charge' is used, it was held by SARGENT, C. J., and BAYLEY, J., as the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused. SCOTT, J., dissented. He was of opinion that, in s. 227, it was used as indicating the whole series of counts or heads of charge.—*Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200.

Section 537 provides that, subject to the provisions hereinbefore contained, no finding, sentence, or order passed by a Court of competent jurisdiction shall be reversed or altered under Chap. XXVII or on appeal or revision, on account of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, or other proceedings before or during trial, or in any inquiry or other proceedings under this Code, or of the want of any sanction required by s. 195, or of the omission to revise any list of jurors or assessors in accordance with s. 324, or of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

In the case of *Emp.* v. *Baban Khan*, I. L. R. 2 Bom. 142, a conviction was set aside on the ground that the charge did not give the accused the information which the law intended him to have of the particular offence as to which he was called upon to answer.

In the case of *Emp.* v. *Ramji Sojabarrao*, I. L. R. 10 Bom., 124, the accused was charged, in the alternative, by the trying Magistrate as follows:—"That you, on or about the 13th day of October 1882, at Nandarpada, stated that you had seen V and M carrying teakwood from Gohe Forest, to Narayan Ram Chandra, Range Forest Officer; and on 14th February 1885, you stated on oath before the first class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Indian Penal Code." At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Indian Penal Code. It was held that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code, which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. It was also held, that the accused could not be tried upon a charge framed in the alternative as in the form given in Sched. V, XXVIIF(4) of the Criminal Procedure Code, as, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged under s. 193 of the Penal Code on contradictory statetments, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant. It was held, also, that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code (X of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence were reversed.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

The words "without a charge" in this section properly apply not only to a case in which there is no charge at all, but also to a case in which there is no charge of such offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for.—*Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200. In that case, A was tried at the Criminal Sessions of the High Court on a charge (1) of murder, (2) of abetting B to commit such murder. The jury, having considered their verdict, were asked by the Clerk of the Crown if they were agreed. The foreman replied that they were, and that their verdict was "guilty;" and, when further asked, he said, "guilty of abetment—abetment generally." On the application of counsel for the prosecution, a charge was then added of "abetment of murder committed by some person or persons unknown." The additional charge was then read aloud to the jury, but was not specially explained to the prisoner, nor was he called upon to plead to it. Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended, but he declined. The then charges (*i.e.*, the two original charges and the additional charge) were then read to the jury, who, after deliberation, returned a verdict of "not guilty" on charges Nos. 1 and 2, and of "guilty" on the charge added, *viz.*, of abetment of murder by some person or persons unknown. On the application of counsel for the prisoner, the following points were reserved:—(1) Whether, under the circumstances, the Court had power to add a new charge; (2) whether the verdict returned on the new charge was valid, the prisoner not having been called upon to plead to it. It was held (SCOTT, J., dissenting) that the Judge was wrong in framing a new charge in addition to the original charges, but that the error was one of form, and not of substance, and therefore, under s. 537, *post*, the Court refused to interfere with the conviction. The Court also considered that, having regard to the provisions of ss. 228, 229, and 230, the charge of abetment of murder by B might have been changed into one of abetment of murder generally. It was held further, that, in any case, the conviction was good under ss. 236 and 237. It was doubtful whether the evidence would establish the offence of murder, abetment of murder by B, or abetment of murder by some one unknown. Even if there had been no charge properly framed, the Judge might, under s. 237, have accepted the verdict returned by the jury, and entered it on the record. The fact that the Judge framed a charge which, *ex-hypothesi*, was beyond his authority, and accepted a verdict on that charge, did not affect the legality of the conviction.

Where the accused was charged under s. 217 of the Indian Penal Code, and the charge did not distinctly state what the direction of the law was which he disobeyed and how he disobeyed it, the conviction was set aside.—*Emp.* v. *Baban Khan*, I. L. R. 2 Bom. 142. The omission, it was considered, to read and explain the charge to the prisoner did not, under the circumstance, prejudice the prisoner, and was therefore immaterial.

In *Reg.* v. *Govind Babli Raul*, 11 Bom. H. C. R. 278, which was a case under the Act of 1872 decided by WEST and NANABHAI, JJ., the Sessions Judge had substituted a charge of abetment of murder for a charge of murder, and it was assumed it could be done.

The power to alter a charge ought to be exercised with caution.—*Reg.* v. *Govindas Haridas*, 6 Bom. H. C. R. Cr. 76.

Where an accused person is committed to take his trial on specific charges before the Sessions Court, the Judge has no power under this section to expunge a charge before calling upon the accused to plead.—*Emp.* v. *Poresholiah Sheikh*, 7 C. L. R. 143. In that case the committing Magistrate sent up the accused to be tried under ss. 323 and 325 of the Indian Penal Code. The Sessions Judge, before calling upon the accused to plead, expunged the charge under s. 325. The Court (MITTER and MACLEAN, JJ.) said: "We think he (the Sessions Judge) had no power to do this under the Criminal Procedure Code, s. 443 (s. 226 of the present Code). The prisoner should have been called upon to plead to both charges. If the accused had pleaded not guilty to the charge under s. 325, the Sessions Judge, after recording evidence, might have recorded a finding in favour of the accused under s. 251 (s. 259 of the present Code) if there was no evidence to support the charge under that section."

The omission on the part of a Magistrate to frame the charge so as to contain a separate head for each offence may be remedied by the Sessions Judge (*Queen* v. *Kalaram Sing*, 7 W. R. Cr. 8); but not after delivery of the verdict.—*Queen* v. *Sheikh Ali*, 5 Bom. H. C. R. Cr. 9.

Charges which require alteration should, as a rule, be amended by the Court of Session before the trial commences. The charge as amended must still run in the name of the committing officer.—*Mad. H. C. Pro.*, *30th August and 8th September* 1862; *Weir*, p. 4.

In the case of *Sreenath Kur*, I. L. R. 8 Cal. 450: (S. C.) 11 C. L. R. 522, a prisoner was committed on 55 counts including three counts under ss. 467, 466, and 471 of the Penal Code. At the trial before the District Judge sitting with assessors, the Court informed the prisoner (without altering the charge) that the trial would be confined to the three counts last mentioned. The prisoner was convicted on these, but the Court allowed evidence to be given by the prosecution on all the remaining charges, and in respect of these the prisoner was acquitted. The High Court, on appeal, held, that the District Judge should have amended the charge (see s. 227), and then proceeded to hold separate trials; that he should not have tried together the counts under ss. 467 and 466 of the Penal Code, as the offences were not of the same kind (see s. 234, *post*), but the conviction was upheld, as it did not appear that the prisoner had been prejudiced by the mode of trial adopted. (See s. 537, *post*.)

In exercise of the powers conferred by s. 35 of the Court Fees Act (VII of 1870), the Governor-General in Council was pleased to remit the fees leviable on copies of charges given to accused persons under the corresponding section of Act X of 1872.—*Gazette of India*, 1873, p. 520. Under s. 210, *supra*, the accused is entitled, if he requires it, to have a copy of the charge free.

As to the effect of errors or omissions in charges, see ss. 232, 535, and 537, *post*.

Court may alter charge.

227. Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

If the word 'alter' in this section, it was held by the Bombay High Court, is to be taken to include 'addition' as it does in s. 226, the addition permitted must be an addition to some specific charge in the nature of an alteration, and not the addition of a new charge.—*Per* SARGENT, C. J., and BAYLEY, J. (SCOTT, J., dissenting), *Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200. See note to s. 225 as to the meaning of the word 'charge' as used by SARGENT, C. J., BAYLEY and SCOTT, JJ. SCOTT, J., was of opinion that the word 'alter' in this section must be taken to be equivalent to "add to, or otherwise alter," used in s. 226, and that, consequently, the addition of a new "head of charge" is an alternation within the meaning of the section. In the case just referred to, it was held, that the omission to read and explain the altered charge to the prisoner did not, under the circumstances (see the facts of the case set out in the note to preceding section), prejudice the prisoner, and was therefore immaterial.

In Madras, in the case of *Mutirakal Kondaghatta Rama Varma*, I. L. R. 3 Mad. 351, R, having been committed by a Magistrate for trial by a Sessions Court on a charge under s. 202 of the Indian Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty on his trial to the charge on which he was committed. Upon the application of the Public Prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge under ss. 109 and 201 of the Indian Penal Code of abetting C, a female prisoner charged with having assisted in burying the body of the murdered person, required R to plead to the charge, and having tendered a pardon to and examined C as a witness, convicted R. It was held that, as there was no evidence before the Magistrate to support the charge against R framed by the Sessions Judge, the action of the Judge was *ultra vires*, and that the conviction on the added charge was illegal. The Court considered that, inasmuch as the Sessions Judge considered R more culpable than C, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an inquiry as to whether there was ground for a more serious charge against R. The Court said: "The action of the Judge in adding the charge must be pronounced *ultra vires*, and as this is not a mere error of procedure, but an improper assumption of jurisdiction, the conviction on the added charge must be quashed."

SCOTT, J., in the case of *Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200, commented on that case. He said: "It is argued that although a *substitution* of a head of charge is admissible, an *addition* of a head is not admissible. I am unable to follow that argument. It seems to me that an addition comes within the spirit of the Act as much as a substitution, always provided that it arises out of the same transaction, and its introduction does not prejudice the prisoner. This seems to be the view of the High Court of Madras. In the case of *Mutirakal Kovilaghatta Rama Varma* v. *Reg.*, I. L. R. 3 Mad. 351, the Sessions Judge had added a charge of abetment after the trial had commenced, and although his action was held to be *ultra vires*, it was so held on the sole ground that the charge added could not be supported by the evidence taken before the Magistrate. It appears clearly from the judgment of the Court that the Judge could have either 'amended or altered the original charge,' or could have 'supplied a charge,' provided it was provable by the evidence before the Magistrate. Now, in the present case, the charge was provable by the evidence taken by the Magistrate, in fact no other was offered. The addition made therefore, would seem admissible on the authority of the Madras case."

The remarks of WEST, J., in the case of *Emp.* v. *Baban Khan Valad Mhaskoji*, I. L. R. 2 Bom. 142 p. 144, are important, and ought to be borne in mind. He said: "We think that the first head of the charge in this case did not give to the accused the information which the law intended him to have, of the particular offence expressed circumstantially, to which he was called upon to answer. The description of crimes in the Penal Code must, of necessity, be expressed in abstract terms, but the very object of a trial is to determine whether particular acts or omissions on the part of the accused fall or do not fall within the rule thus abstractedly stated. * * The least that can fairly be allowed in favour of one criminally convicted is, that when a charge has been expressed in vague terms, the prosecution should be limited on appeal to the particular sense in which these terms have been understood in the actual trial."

In the case of *Emp.* v. *Gordon*, I. L. R. 9 All. 525, STRAIGHT J., dissented from *Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200. In the case before him the prisoner was committed on charges under ss. 467 and 471 of the Penal Code, and at the trial STRAIGHT J., directed the Clerk of the Crown to add a charge of fabricating false evidence under s. 193 of the Penal Code. It was objected that the Court had no power under s. 227 to add a fresh charge upon which the accused had not been committed for trial, and that all it could do was to alter existing charges. STRAIGHT, J., overruled the objection, holding that he was not bound by the decision of the Bombay Court, and agreeing with SCOTT, J. See *Reg.* v. *Waris Ali*, N. W. P. H. O. Rep. 1871, p. 337. The word "alter" has been held to include the withdrawal by a Sessions Judge of a charge added by him to the charge on which the commitment was made.—*Dwarka Lal* v. *Mahadeo Rai*, I. L. R. 12 All. 551,—though having regard to s. 215 it would seem that the Sessions Judge would have had no power to expunge the original charges on which the accused was committed to take his trial. Where there is no evidence on particular charges before a Session Judge the usual course is for him to record a finding under s. 289, *post*.

The omission on the part of a Magistrate to frame the charge so as to contain a separate head for each offence may be remedied by the Sessions Judge (*Queen* v. *Kalaram Sing*, 7 W. R. Cr. 8); but not after delivery of the verdict.—*Queen* v. *Sheik Ali*, 5 Bom. H. C. R. Cr. 9.

At a trial in which the accused were charged with culpable homicide not amounting to murder of J, the Sessions Judge added a charge of causing hurt to C at the same time, and convicted the accused both on the original charge and added charge. It was held that, as the accused had not been committed, "without a charge" or on "an imperfect" or an "erroneous charge," the case did not come within s. 226, but inasmuch as it did not appear that there had been a failure of justice or that the accused had been prejudiced, the High Court refused to interfere.—*Emp.* v. *Kharga*, I. L. R. 8 All. 665.

Charges which require alteration should, as a rule, be amended by the Court of Session before the trial commences. The charge as amended must still run in the name of the committing officer.—*Mad. H. C. Pro.*, *30th August and 8th September* 1862; *Weir*, p. 4.

The power to alter ought to be cautiously exercised.—*Reg.* v. *Govindas Haridas*, 6 Bom. H. C. R. Cr. 76.

As to the effect of errors or omissions in charges, see ss. 232, 535 and 537, *post*. See note to s. 225, *supra*.

When trial may proceed immediately after alteration.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

The principle by which the Court should be guided in determining whether the case should go on immediately is discussed in *Reg.* v. *Govind Babli Raut*, 11 Bom. H. C. R. 278.

A Sessions Court has no power to add a charge as to which no evidence has been taken by the committing Magistrate, the object of the Legislature being to secure in the case of a person charged with a grave offence a preliminary inquiry which would afford him an opportunity of becoming acquainted with the circumstances of the offence imputed to him and enable him to make his defence. The proper course is to postpone the trial and give the committing Magistrate an opportunity of making a further enquiry.—*Mutirakal Kovilaghatta* v. *Reg.* I. L. R., 3 Mad. 351.

When new trial may be directed, or trial suspended.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

In the case *Mutirakal Kovilaghatta Rama Varma* v. *Reg.*, I. L. R. 3 Mad. 351 the High Court discussed the circumstances under which it considered that a case should have been adjourned for inquiry.

The object of the law is to secure the prisoner a preliminary inquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him, and enables him to make his defence.—*Mutirakal Kovilaghatta Rama Varma* v. *Reg.*, I. L. R. 3 Mad., 351.

In the case of *Reg.* v. *Govind Babli Raul*, 11 Bom. H. C. R., 278, while A and B were tried jointly, A for murder and B for abetment of murder, a confession by A that he had committed the murder at the instigation of B was put in as evidence against himself. Subsequently, the charge against A was altered to abetment of murder, and the trial proceeded; and the Court, under the authority of s. 30 of the Evidence Act [See amendment of s. 30 of the Evidence Act by Act III of 1891 s. 4], used the confession against both and convicted both, B's pleader not having objected to the admissibility of the confession against his client. The Court upheld the conviction. "It is only," it was said, "in the case of charges closely related that a trial goes on forthwith after an amendment, and in this instance the original and amended charges are so nearly related that, in the absence of technical objections urged on behalf of the prisoner, the trial might without unfairness, be deemed, for the reception of evidence and all other purposes, to have been a trial on the amended charge from the commencement."

In *Emp.* v. *Appa Subbana Mendre*, I. L. R. 8 Bom. 200, the alteration in the charge was not read and explained to the prisoner, but as his counsel on being asked if he wished for a new trial declined it, it was held that the omission to read and explain the alteration could not have prejudiced him.

Where proceedings, which had already been taken against the accused before another Magistrate, had been quashed and a new trial directed, the Magistrate holding the new trial is not justified in referring to the former record as a whole, but only to such portions of it as have been specially put in evidence before him.—*In re Davi Dutt*, 7 C. L. R., 193.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Section 537 provides, that no finding, sentence, or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII, or on appeal or revision, on account of the want of any sanction required by s. 195, unless the omission has occasioned a failure of justice. It does not deal with cases where prosecutions have been instituted against public servants without the sanction required under ss. 132 and 197.

Re-call of witnesses when charge altered.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon, and examine with reference to such alteration, any witness who may have been examined.

Effect of material error.

232. If any Appellate Court or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and

that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge: but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Section 535 provides, that no finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of Appeal or Revision, a failure of justice has been occasioned thereby. If the Court of Appeal or Revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge. See also s. 537, *infra*.

Mr. Justice Stephen, in his History of Criminal Law, Vol. III. p. 337, in a note on ss. 221, 240 of the present Code, says: "I drew these sections in the Code of 1872. They are re-enacted with little alteration." And he then goes on to say.: "The provisions relating to 'charges' are intended to provide that 'the charge' shall give the accused full notice of the offence charged against him, but that the only result of any defect in the charge shall be an amendment on terms as to delay or a new trial, if the accused seems to have been misled."

It is quite clear from this passage, SCOTT, J., considered, that the intention of the Legislature was to permit all amendments which would not prejudice the prisoner in his defence. In other words, prejudice to the prisoner was intended for the future to be the test of admissibility or rejection of proposed amendments. See *Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200, p. 213. See also *Emp.* v. *Gordon*, I. L. R. 9 All. 525.

The very object of a trial is to determine whether particular acts or omissions on the part of an accused do or do not amount to the particular offence to which an accused person is called upon to answer. In the case of *Emp.* v. *Bahan Khan Valad Mhaskoji*, I. L. R. 2 Bom. 142, it appeared that the first head of the charge did not give to the accused the information which the law intended him to have of the particular offence to which he was called upon to answer. On appeal, the Court laid down a rule in the following words: "The least that can fairly be allowed in favour of one criminally convicted is, that when a charge has been expressed in vague terms, the prosecution should be limited to the particular sense in which these terms have been understood at the trial."

New Trial.—Where proceedings, which had already been taken against the accused before another Magistrate, had been quashed, and a new trial directed, the Magistrate holding the new trial is not justified in referring to the former record as a whole, but only to such portions of it as have been specially put in evidence before him.—*In re Devi Dutt*, 7. C. L. R. 193.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

Act X of 1872, s. 452: Act X of 1875, s. 17: Act IV of 1877, s. 105.

As to the meaning of the word 'charge,' see notes to the preceding sections.

Offences under s. 167 and 466 of the Penal Code respectively are distinct.—*Sreenath Kur* v. *Emp.*, 10 C. L. R. 421: (S. C.) I. L. R. 8 Cal. 450; so are the offences of receiving and retaining stolen property punishable under s. 411, and of habitually receiving and dealing in such property punishable under s. 413.—*Uttom Koondoo* v. *Emp.*, 10 C. L. R. 406: (S. C.) I. L. R. 8 Cal. 934. Offences under ss. 272 and 273 of the Penal Code respectively are also distinct.—*Emp.* v. *Rommana*, I. L. R. 12 Mad. 273. Where several persons are accused of giving false evidence in the same proceeding they should be separately charged and tried.—*Emp.* v. *Anant Ram*, I. L. R. 4 All. 203. So persons charged with offences of the same kind, *e.g.*, nuisances, should be separately charged and tried.—*Pulisanki* v. *Emp.*, I. L. R. 5 Mad. 20.

Where five persons were charged with having committed the offence of rioting on the 5th December, and four out of those persons and one F were charged with having committed the offence of criminal trespass on the 9th December, and the two cases were taken up and tried and disposed of together, it was held that having regard to the terms of s. 233 the trial was illegal, and that the defect was not cured by s. 537, *post*.—*In re Chandi Singh*, I. L. R. 14 Cal. 396. In another case, in which *Emp.* v. *Chandi Singh*, I. L. R. 14 Cal. 395, was relied on, the High Court of Madras held that it was irregular (and not illegal) to try A for theft and B and C for rescuing A from lawful custody in one trial. But as it did not appear that the accused had been prejudiced the Court refused to interfere with the convictions.—*Emp.* v. *Kutti*, I. L. R. 11 Mad. 441.

It has been questioned whether a charge containing alternative charges of perjury can be reconciled with the provisions of this section, which requires that each offence shall be subject of a separate charge except in the particular cases provided for by the section. But it was held by a majority of the Full Bench in *Queen* v. *Mohomed Humayoon Shaw*, 21 W. R. Cr. 72: 13 B. L. R. 324, that such a charge is not a charge of two offences, but of one. See *Habibullah* v. *Emp.*, I. L. R. 10 Cal. 937. The form of charge given in Sched. V, XXVIII-*II* (4), and sanctioned by s. 554, *post*, may be followed, whether the two inconsistent statements in respect of which, the perjury is assigned are made in one deposition or on different occasions.—*Ibid.* See *Emp.* v. *Ghulsi*, I. L. R. 7 All. 44, overruling *Emp.* v. *Niaz Ali*, I. L. R. 5 All. 17.

In the case of *Emp.* v. *Ramji Sujabarao*, I. L. R. 10 Bom., 124, the accused was charged, in the alternative, by the trying Magistrate as follows:—"That you, on or about the 13th day of October 1882, at Nandurpada, stated that you had seen V and M carrying teakwood from Gohe Forest, to Narayan Ram Chandra, Range Forest Officer; and on 14th February 1885, you stated on oath before the first-class Magistrate at Peu, at the trial of those persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Indian Penal Code." At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Indian Penal Code. The Court held that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code, which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. It was also held, that the accused could not be tried upon a charge framed in the alternative as in the form given in Sched. V, XXVIII (4) of the Criminal Procedure Code, as, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged under s. 193 of the Penal Code, on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant.

It was considered also that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code, the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. See *Emp.* v. *Fakirapa*, I. L. R. 15 Bom. 491: *Emp.* v. *Malua*, I. L. R. 14 All. 502.

The Court expressed its opinion that, in charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made. See *Emp.* v. *Ghulet*, I. L. R. 7 All. 44.

Three offences of same kind within year may be charged together.

234. When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

This section corresponds with Act X of 1872, s. 453, omitting the Explanation; Act X of 1875, s. 18; and Act IV of 1877, s. 106. Compare the Statute 24 and 25 Vict., c. 96, s. 5, which provides, that "it shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them."

This section modifies the preceding section, which requires a separate charge and a separate trial for every distinct offence, by allowing three charges of three distinct offences of the same kind and committed within one year of each other to be tried together. An accused person may be separately tried for other offences. This is clear from Illustration (*b*) to the next section.—*In re Ram Manikya Chuckkerbarty*, 1 C. L. R. 478: (S.C.) I. L. R. 3 Cal. 540. There is nothing in the section to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year. It simply places a statutory limit on the number of charges which may legally form part of a single trial. See next section Illustration (*b*). In the case of *Luchminarain*, I. L. R. 14 Cal. 128, PETHERAM, C. J., expressed an opinion that if a man were tried for four specific offences of the same kind at one trial such procedure would not be merely an irregularity which could be cured by s. 537 of the Code, but a defect in the trial which would render the whole trial inoperative, unless possibly it could be cured by some subsequent proceeding by striking out some portion of the charge. See also *Reg.* v. *Hanmanta*, I. L. R. 1 Bom. 611: *Emp.* v. *Murari*, I. L. R. 4 All. 147.

As to case of any irregularity, see s. 537, *post*.

Offences under ss. 167 and 406 of the Penal Code respectively are not of the same kind (*Sreenath Kur* v. *Emp.* 10 C. L. R. 421: (S. C.) I. L. R. 8 Cal. 450); nor are the offences of receiving or retaining stolen property punishable under s. 411, and of habitually receiving or dealing in such property punishable under s. 413 of the Indian Penal Code, the same within the meaning of this section.—*Uttom Koondoo* v. *Emp.*, 10 C. L. R. 466: (S. C.) I. L. R. 8 Cal. 634; nor are offences under ss. 272 and 273 of the Penal Code, respectively.—*Emp.* v. *Rommana*, I. L. R. 12 Mad. 273.

In the case of *Emp.* v. *Murari*, I. L. R. 4 All. 147, the Allahabad High Court (STRAIGHT, J.) held, under Act X of 1872, that the combination of three offences of the same kind for the purpose of one trial could only be where they have been committed in respect of one and the same person, and not in respect of different prosecutors, within the period of twelve months. The Calcutta High Court (FIELD and NORRIS, JJ.), however, refused to follow the decision in that case, holding that "offences of the same kind" are not limited to offences against the same person.—*Manu Miya* v. *Emp.*, I. L. R. 9 Cal. 371: (S. C.) 11 C. L. R. 522. See the remarks of Lord Blackburn in *Reg.* v. *Castro*, L. R. 6 App. Ca. 229. In the Calcutta case, the accused was charged under the same charge with house-breaking by night with intent to commit a theft in the house of A, and also with the same offence in the house of B, and upon his own plea was found guilty; and on appeal the

conviction was upheld. NORRIS, J., pointed out, however, that Judges should take care that prisoners are not prejudiced by charges being joined, and should at all times be anxious to lend a willing ear to any application for separation of charges and for separate trials upon separate charges.

In the case of *Emp.* v. *Juala Prosad*, I. L. R. 7 All. 174, the cases of *Emp.* v. *Murari*, I. L. R. 4 All. 147, and *Manu Miya* v. *Emp.*, I. L. R. 9 Cal. 371, were considered by a Full Bench of the Allahabad High Court. There a postmaster was accused of having, on three different occasions, within a year, dishonestly misappropriated moneys paid to him by different persons for money orders, and the Full Bench held that the offences were "of the same kind," being dishonest misappropriations by a public servant of public moneys (for as soon as they were paid they ceased to be the property of the remitters), and that the accused might, therefore, be charged, under s. 234, with, and tried at one trial for, all three offences.

As to the case of *Emp.* v. *Murari*, I. L. R. 4 All. 147, PETHERAM, C. J., who delivered the judgment of the Full Bench, said, "that (case) was decided by Justice STRAIGHT under a different Statute, Act X of 1872, and his decision in that case will be unaffected by ours in this."

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

I.—Trial for more than one offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

II.—Offence falling within two definitions.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts.

III.—Acts constituting one offence, but constituting when combined a different offence.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations

to paragraph I—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under ss. 225 and 333 of the Indian Penal Code.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under ss. 454 and 497 of the Indian Penal Code.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under ss. 498 and 497 of the Indian Penal Code.

(*d*) A has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under s. 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under s. 473 of the Indian Penal Code.

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under s. 211 of the Indian Penal Code.

(*f*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under ss. 211 and 194 of the Indian Penal Code.

(*g*) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.

(*h*) A threatens B, C, and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under s. 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under ss. 352 and 323 of the Indian Penal Code.

(*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal

the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Indian Penal Code.

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under ss. 317 and 304 of the Indian Penal Code.

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under s. 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under ss. 471 (read with 466) and 196 of the same Code.

to paragraph III—

(*m*) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under ss. 323, 392, and 394 of the Indian Penal Code.

Act X of 1872, s. 454, omitting Illustrations (*e*), (*h*), (*i*), and (*k*) to that section : Act X of 1875, s. 19 Act IV of 1877, s. 108. The last clause is new.

The provisions of the former Acts as to the amount of punishment have been omitted, as they belong to substantive law and not to procedure. As pointed out by Mr. Mayne in his Commentaries on the Indian Penal Code, 12th Edition, p. 43, s. 235, combined with s. 71 of the Penal Code, seems to reproduce the provisions of Act X of 1872. The omission of all references to punishment in the section itself and in the Illustrations which were contained in the repealed section (454) shows, that it is to be treated merely as containing rules for criminal pleading and procedure, and that the rules for assessment of punishment must be sought for in s. 71 of the Penal Code, as amended by Act VIII of 1882, and in s. 35, *ante*. See *Emp.* v. *Sakharam*, I. L. R. 10 Bom. 493, as to the effect of the amendment of s. 71 of the Penal Code.

Section 71 of the Penal Code, as amended by s. 4 of Act VIII of 1882, which is to be read in connection with this section, is as follows :—

"Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of his offences, unless it be so expressly provided.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences." [Act VIII of 1882, s. 4.]

Illustrations.

(*a*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y. Here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z and to another for the blow given to Y.

Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass and at the same time committed mischief, TURNER, J., held, that he could not, under cl. iii of s. 454 of the Criminal Procedure Code, receive a punishment more severe than might have been awarded for either of such offences.—*Emp.* v. *Budh Sing*, I. L. R. 2 All. 101.

Under s. 454 of Act X of 1872 it was held, that the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code must not exceed that which may be awarded for the graver offence. See Illustration (*g*) to this section.—*In re Jubdar Kazi*, I. L. R. 6 Cal. 718 : (S. C.) 8 C. L. R. 390 : *Reg.* v. *Tukya Bin Tamana*, I. L. R. 1 Bom. 214. But see *Emp.* v. *Sakharam*, I. L. R. 10 Bom. 493 : *Emp.* v. *Mohurrum*, Punj. Rec. 1888, p. 11 : *Emp.* v. *Wazir Jan*, I. L. R. 10 All. 58, p. 66. See also *Reg.* v. *Dod Basaya*, 11 Bom. H. C. R. 13.

When a prisoner is tried on several heads of charge, the most convenient course with reference to appeals is to enter up findings on all the counts ; though where the several heads of charge are all founded on one continuous transaction, punishment can only be awarded on one.—*Mad. H. C. Pro., 4th July* 1867; *Weir*, p. 43.

In Madras, where a prisoner was tried, convicted, and punished under s. 369 of the Penal Code for the offence of abducting a child with intent dishonestly to take moveable property, it was held, that he could not also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction. The Court, MORGAN, C. J., and HOLLOWAY, J., made the following observations :—

"The immediate question is, whether a prisoner tried, convicted, and punished under s. 369 of abducting a child with intent dishonestly to take moveable property can also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction.

"Save for the new Code, this course would be illegal under the repeated decisions of this Court. Section 454 I (*c*) is the section by which this process is to be supported, if at all. If the words of this branch are taken in connection with those of s. 452, which precedes it, and of branches II and III, they do not so. Section 452 contains a rule of criminal pleading as to the necessity of a separate charge and a separate trial for each distinct offence. Then s. 453 (similarly to the English rule as to several embezzlements) modifies this rule as to offences of the same kind committed with a year. The pre-requisites of joinder are similarity of the offences and their falling within the time. Then, strangely enough, s. 455 is quoted as the key to the similarity, and the result seems to be that they are similar when it is doubtful to which of them the provable facts in each may amount. It

can, we suppose, scarcely be meant that the element of doubt is to be the governing point. It perhaps means that where, as in the Illustration, the criminative facts which constitute the offence are so nicely shaded that it is often doubtful *primâ facie* to which specific definition the facts are to be subsumed, there may be a joint trial.

"A further modification of the rule of severance is introduced in s. 454 I. Where facts 'so united as to form the same transaction' fulfil the requisites of the definitions of several offences, there may be one charge and one trial.

"Nothing is here said about the punishment, and we have still a mere rule of criminal pleading modifying the general rule.

'It is not until we come to the Illustrations that we find punishment imported, and, with the exception of (*c*) and (*d*), it may, perhaps, be said that the offences are all different in character. These are mere transcripts of decided cases which seem inconsistent with the principles of others decided by the same Court, (*e*) is perhaps reconcilable if the kidnapping was for a different purpose, but if the kidnapping was for the purpose of subjecting to slavery, it will be impossible to reconcile it with other decisions and with the subsequent parts of this section

"(*b*) embraces the case of three murders, and the legal principle is sound, though, perhaps, the application in practice will be found difficult

"If we take the section there is, therefore, nothing to overrule the previous decisions; but undoubtedly the Illustration is opposed to former decisions, and, unless explained as above, is direct authority for the two sentences passed in the present case

"If, however, we are to import the Illustrations as a gloss upon I, and as explanatory of its meaning, we must perform the like operation upon III, and must, if possible, reconcile all the three parts of the section.

"III says that where several facts aggregated form one offence, and if severed constitute several, the offender may be charged with every offence committed, but the utmost punishment awardable is the extreme punishment for the concrete or for one of the separate offences We presume that the Court may elect whether it will punish for the one or the other, but it may not punish for both.

"Now the words of the section do not meet the case Kidnapping with intent to steal is not an offence formed by the union of kidnapping with stealing, but by the union of kidnapping with intent to do it, and the result on the mere words would be that the section contains no inhibition of two punishments

"The Illustrations, however, show that the framers imagined that they had provided for the further case of the second offence being the substantive criminal act which was the aim of the intention in the former and therefore evidentiary matter of that intent Thus (*n*) house-breaking with intent to commit adultery, and the commission of it, may not be separately punished Still nearer to the present case is (*p*). The enticing away (it does not even say for the purpose of committing adultery) and adultery may not be separately punished The measure of the punishment is here again the largest amount awardable for one of the offences

"The section, therefore, with its Illustrations forbids two punishments for an offence so compounded that one substantive offence is the aim of the other, and evidentiary matter of the intent necessary to constitute that other. It is not narrowed to offences of a cognate character, for house breaking and adultery have no more connexion than kidnapping and theft We come to the conclusion, therefore, that, despite the inaptness of the words, there is nothing in these sections intended to alter the law, that, unless the Illustrations are looked at, there is nothing to alter the principles upon which punishments were awarded before the Act passed, and that when they are all taken together, those attached to a branch which does introduce a limitation upon the power of punishment, must prevail over those attached to what is by itself a mere rule as to the joinder of charges

'Read I and II together; they come to this, you may join them, but if, when joined, several make up one compound offence, you shall only punish for one. They shall be considered to make up such a compound when one of them is the criminal result at which the other has arrived. You may then punish to the extent permissible for any one of them, but you shall not tack the punishments together."—*Re Nonjan*, 7 Mad H C R 375 It is to be observed that this case dealt with an Illustration to s. 454 of Act X of 1872 which has not been reproduced.

Although persons may be tried in the same trial under the first clause of this section for more than one offence arising out of the same transaction, *e g*, for rioting and causing hurt, it is not illegal to try them for the different offences separately (*In re Amiruddin*, I L R. 8 Cal. 481; *Emp.* v *Ram Partab*, I L R 6 All 121, *per* STRAIGHT, J, p 122), but a member of an unlawful assembly, some members of which have caused hurt, cannot lawfully be *punished* for the offence of rioting as well as for the offence of causing hurt—*Emp* v *Ram Partab*, I L R 6 All 121, but see *Emp.* v *Dungar Singh*, I L R 7 All 29 In the former of the two last mentioned cases STRAIGHT, J, pointed out that, in case of riot where hurt or grievous hurt has been caused, it is convenient to try the offences of riot and grievous hurt together, as it often happens in the course of criminal trials that the evidence turns out inadequate to prove the most serious or more serious counts, but discloses sufficient to allow a conviction of a minor offence, and if the accused's plea to the count charging this has been taken at the outset of the proceedings, the trouble of alteration and amendment of the charge at a later stage is avoided In dealing with the question of punishment he said "It seems to me that the plain meaning of the law as provided in s 4 of Act VIII of 1882 is, that if in the course of a transaction a person commits different offences inextricably mixed up with one another, and all graduating towards, essential to and culminating in a single distinct offence, he is not to be punished separately upon conviction for each single and distinct offence and for any or each of such other offences as well For example, a man holds up his fist to another in a threatening manner, then he strikes him a slight blow with a stick, and ends by stabbing him with a knife Technically he has committed an assault, has caused hurt and has caused grievous hurt, but no one would seriously contend that he should be punished separately for each of those offences So, in the present case, the appellant was a member of an unlawful assembly, he participated in a riot, and in the course of such riot grievous hurt was caused by persons other than

himself for which he was responsible in law as if his own hand had inflicted it, by reason of his being a member of an unlawful assembly of which they were also members. It was permissible to try and convict him for riot and for causing hurt or grievous hurt, as the case might be, in respect of each person assaulted, subject of course to the limitation of s. 234 of the Criminal Procedure Code as to the number of charges joined; but while he might be punished for the riot or upon each of the charges of grievous hurt separately, I do not think that different sentences can be framed for the riot and in respect of one or each of such other charges as well. In my opinion the riot is a part of those other offences, the force or violence incident to their commission converting what would otherwise have been a mere unlawful assembly into a riot."—p. 124.

In the case of *Emp.* v. *Jubdar Kazi*, I. L. R. 6 Cal. 718: (S.C.) 8 C. L. R. 390, the Calcutta High Court (MITTER and MACLEAN, JJ.) doubted whether separate sentences under ss. 147 and 324 of the Indian Penal Code were legal, and they referred to *Reg.* v. *Durzoo'a*, 9 W. R. Cr. 33, in support of their view; but see *Reg.* v. *Calla Chund*, 7 W. R., Cr., 49: *Emp.* v. *Ram Adhin*, I. L. R. 2 All. 139: *Reg.* v. *Dina Sheik*, 10 W. R. Cr. 63: *In re Nurutton Singh*, 16 W. R. Cr. 45.

See ss. 34 and 35, *supra*, and the notes thereto.

In the case of *Emp.* v. *Dungar Singh*, I. L. R. 7 All. 29, BRODHURST, J., dissenting from the opinion of STRAIGHT, J., in *Emp.* v. *Ram Partab*, I. L. R. 6 All. 121, held that, under the first paragraph of s. 235, a person accused of rioting and of voluntarily causing grievous hurt may be charged with and tried for each offence at one trial, and that under s. 35, *supra*, a separate sentence might be passed in respect of each—the offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt, each of the latter offences being committed against a different person, being all distinct offences within the meaning of the latter section. That case was followed in *Jaffir Khan* v. *Emp.*, Punj. Rec., 1885, p. 71, and by TOTTENHAM and GHOSE, JJ., in *Loknath Shroar* v. *Emp*, I. L. R. 11 Cal. 349. In the latter case A and B were charged with rioting, armed with deadly weapons, under s. 148 of the Penal Code, and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to X, and B was further charged under s. 324 with causing like hurt to Y. A being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. It was held that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Indian Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that, consequently, under s. 235, *post*, the several sentences passed were strictly legal. See *Reg.* v. *Durzoolla*, 9 W. R. Cr. 33: *Queen* v. *Dina Sheikh*, 10 W. R. Cr. 63: *Queen* v. *Shahabut Sheikh*, 13 W. R. Cr. 42: and *Emp.* v. *Jubdar Kazi*, I. L. R. 6 Cal. 718: (S. C.) 8 C. L. R. 390. See also *Emp.* v. *Pershad*, I. L. R. 7 All. 414 (F. B.).

In consequence of this difference of opinions expressed by STRAIGHT, J., in the case of *Emp.* v. *Ram Partab*, I. L. R. 6 All. 121, and by BRODHURST, J., in *Emp.* v. *Dungar Singh*, I. L. R. 7 All. 29, and *Emp.* v. *Pershad*, I. L. R. 7 All. 414, the matter of difference was referred to a Full Bench in *Emp.* v. *Ram Sarup*, I. L. R. 7 All. 759, but it was unnecessary for the purposes of that case to decide upon the conflict. See *In re Chandra Kant Bhattacharjee*, I. L. R. 12 Cal. 495. The case of *Emp.* v. *Ram Partab*, I. L. R. 6 All. 121, was dissented from in *Emp.* v. *Bishesher*, I. L. R. 9 All. 645, and the Court approved of *Emp.* v. *Dungar Singh*, I. L. R. 7 All. 29: *Emp.* v. *Ram Sarup*, I. L. R. 7 All. 757: *Emp.* v. *Pershad*, I. L. R. 7 All. 414: and *In re Chandra Kant Bhattacharjee*, I. L. R. 12 Cal. 495.

Under ss. 35 and 235 of the Code a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 379 or 380, and 454 of the Penal Code for house-breaking in order to the commission of theft, and theft, the two sentences forming part of the same transaction and being tried together. But a Sessions Judge trying such a case under ss. 379 or 380, and s. 454 would under no circumstances be justified in passing a sentence of 10 years' imprisonment under the latter part of s. 454 and of four years under s. 380. The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who not only intended to commit but had actually committed theft.—*Emp.* v. *Zor Singh*, I. L. R. 10 All. 146.

Where more than one offence is proved in respect of which the accused has been charged and tried a conviction for each such offence must follow, and subject to the provisions of s. 71 of the Penal Code a separate sentence must be passed in respect of each such conviction.—*Emp.* v. *Wazir Jan*, I. L. R. 10 Bom. 58.

It must be borne in mind that no Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself jurisdiction or for the purpose of giving himself summary jurisdiction. Thus, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon, while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily and then by inflicting sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal.—*Emp.* v. *Abdool Kurim*, I. L. R. 4 Cal. 18.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

See Act X of 1872, s. 455; Act X of 1875, s. 20; Act IV of 1877, s. 108.

This section applies to cases in which, not the facts are doubtful, but the application of the law to the facts is doubtful. See *Khan Muhammed*, Punj. Rec., 1887, p. 19. Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty. —*Queen* v. *Jamurha*, 7 N.-W. P. 137.

The offences mentioned in the section are not in fact offences of the same kind, but offences of different kind arising out of a "single act or set of acts," and must have been committed at one and the same time.—*Manu Miya* v. *Emp.*, I. L. R. 9 Cal. 371: (S. C.) 11 C. L. R. 522. Where three persons were charged, two of them with culpable homicide not amounting to murder of A, and the third with abetment of that offence the Sessions Judge added a charge against all the accused of causing hurt to C. It was held that the Judge had no power to add the charge, and that the irregularity was not covered by ss. 236 and 237.—*Emp.* v. *Kharga*, I. L. R. 8 All. 665.

Alternative Charge.—In *Reg.* v. *Mahomed Hoomayoon Shaw*, 13 B. L. R. 324, where a person was convicted of giving false evidence upon an alternative charge in the form given in Sched. III of Act X of 1872, the majority of the Full Bench (JACKSON and PHEAR, JJ., dissenting) held that the conviction was good notwithstanding that the jury had not distinctly found which of the two statements was false. JACKSON, J., was of opinion that such a charge was bad, and further, that an alternative finding upon such a charge was invalid, while PHEAR, J., considered that although a person might be lawfully tried upon such a charge, the jury or the Court must, for a conviction, find specifically which branch of the alternative was true.

Under the present Code it has been held, that a conviction upon an alternative charge in the form provided by Sched. V, XXVIII-*II* (4), *post*, of giving false evidence, such evidence consisting of contradictory statements contained in *one* deposition while the accused was under cross-examination and re-examination as a witness in a judicial proceeding, was good, although there was no finding as to which of the contradictory statements was false: *Habibullah* v. *Emp.*, I. L. R. 10 Cal. 937, *per* WILSON and TOTTENHAM, JJ. (NORRIS, J., dissenting). So in *Emp.* v. *Ghulet*, I. L. R. 7 All. 44, overruling *Emp.* v. *Niaz*, I. L. R. 5 All. 17, a conviction was held to be good where the contradictory statements upon oath were made at different times, and it was not shown which was false.—See *Sohan Singh*, Punj. Rec., 1888, p. 56; *Harnam Sing* v. *Emp.*, Punj. Rec., 1890, p. 90.

Where perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken in the case in which it is tried. If the whole proof consists of two conflicting statements, an alternative charge and finding are the regular course.—*Mad. H. C. Pro.*, 30*th November* 1874; *Weir*, p. 5; *Pro.*, 4 *Mad. H. C. R.* 1874; *Weir*, pp. 4, 5.

Section 72 of the Penal Code declares that in all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

In charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made.—*Emp.* v. *Ramji Sajabarao*, I. L. R. 10 Bom. 124: *Emp.* v. *Ghulet*, I. L. R. 7 All. 44. In the case of *Emp.* v. *Ramji Sajabarao*, I. L. R. 10 Bom. 124, the accused was charged in the alternative, by the trying Magistrate as follows:—

"That you, on or about the 13th day of October 1882, at Nandarpada, stated that you had seen V and M carrying teakwood from Goho Forest, to Narayan Ram Chandra, Range Forest Officer; and on 14th February 1885, you stated on oath before the first class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Indian Penal Code." At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Indian Penal Code. The Court held, that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code, which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. It was also held, that the accused could not be tried upon a charge framed in the alternative as in the form given in Sched. V, XXVIII (4) of the Criminal Procedure Code, as, upon the facts alleged; there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged under s. 193 of the Penal Code, on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant.

For form of alternative charge under s. 193 of the Penal Code, see Sched. V, XXVIII-*II* (4).

The words "without a charge" in this section properly apply not only to a case in which there is no charge at all, but also to a case in which there is no charge of such offence as the Sessions Judge, or Clerk of the Crown may think the prisoner ought to be tried for.—*Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200. In that case A was tried at the Criminal Session of the High Court on a charge (1) of murder, (2) of abetting B to commit such murder. The jury having considered their verdict were asked by the Clerk of the Crown if they were agreed. The foreman replied that they were, and that their verdict was "guilty;" and when further asked, he said, "guilty of abetment, abetment generally." On the application of counsel for the prosecution, a charge was then added of "abetment of murder committed by some person or persons unknown." The additional

charge was then read aloud to the jury, but was not specially explained to the prisoner, nor was he called upon to plead to it. Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended, but he declined. The three charges (*i.e.*, the two original charges and the additional charge) were then read to the jury, who, after deliberation, returned a verdict of "not guilty" on charges Nos. 1 and 2 and of "guilty" in the charge added, *viz.*, of abetment of murder by some person or persons unknown. On the application of counsel for the prisoner, the following points were reserved: (1) Whether, under the circumstances, the Court had power to add a new charge; (2) whether the verdict returned on the new charge was valid, the prisoner not having been called upon to plead to it. It was held (SCOTT, J., dissenting) that the Judge was wrong in framing a new charge in addition to the original charges, but that the error was one of form, not of substance, and therefore, under s. 537, *post*, the Court refused to interfere with the conviction. The Court also considered that, having regard to the provisions of ss. 228, 229, and 230, the charges of abetment of murder by H might have been changed into one of abetment of murder generally. It was held further, that, in any case, the conviction was good under ss. 236 and 237. It was doubtful whether the evidence would establish the offence of murder, abetment of murder by B, or abetment of murder by some one unknown. Even if there had been no charge properly framed, the Judge might, under s. 237, have accepted the verdict returned by the jury and entered it in the record. The fact that the Judge framed a charge which *ex-hypothesi*, was beyond his authority and accepted a verdict on that charge did not affect the legality of the conviction. The omission to read and explain the charge to the prisoner did not, under the circumstances, prejudice the prisoner, and was therefore immaterial.

In *Reg.* v. *Govind Babli Raut*, 11 Bom. H.C.R. 278, which was a case under the Act of 1872, decided by WEST and NANABHAI, JJ., the Sessions Judge had substituted a charge of abetment of murder for a charge of murder, and it was assumed it could be done.

The power to alter a charge ought to be exercised with caution.—*Reg.* v. *Govindas Haridas*, 6 Bom. H. C. R. Cr. 76.

When a person is charged with one offence, he can be convicted of another.

237. If, in the cases mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or receiving stolen goods (as the case may be), though he was not charged with such offence.

Where a person was charged by an Assistant Sessions Judge with (1) attempting to commit criminal breach of trust as a public servant, (2) framing as a public servant an incorrect document to cause an injury, (3) framing as such public servant an incorrect document to save a person from punishment, and was acquitted on the ground that he was not a public servant, though the Judge found that he had framed the document with a fraudulent intent, it was held that the Judge ought to have convicted him of attempting to cheat under ss. 455 and 456 of, Act X of 1872; and, as the facts which he would have had to meet on that charge were the same as he had to meet on the charge of criminal breach of trust, allowed the objection urged at the hearing, though not distinctly taken in this appeal by the Government, and ordered a re-trial of the accused.—*Reg.* v. *Ramajirav Jivbajirav*, 12 Bom. H. C. R. 1: See *Emp.* v. *Appa Sabhana Mendre*, I. L. R. 8 Bom. 200.

See note to preceding section.

When offence proved included in offence charged.

238. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he is not charged with it.

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199, when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under s. 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under s. 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under s. 406.

(*b*) A is charged under s. 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under s. 335 of that Code.

The last two clauses of the section and Illustration (*b*), which is founded upon the case of *Queen* v. *Lukhenarain Agoori*, 23 W. R. Cr. 61, are new.

Section 198 deals with prosecutions for criminal breach of contract, defamation, and offences against marriage. Section 199 deals with prosecutions for adultery and enticing married women.

With reference to the observations of WEST, J., in *Reg.* v. *Chand Nur*, 11 Bom. 241 (quoted below), on the corresponding section of Act X of 1872, this section has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence. In that case the Bombay High Court annulled a conviction and sentence for abetment of murder, where the accused was charged with murder. WEST, J., said :—"Section 457 applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence. The graver charge in such a case gives the accused notice of all the circumstances going to constitute the minor of which he may be convicted. The latter is arrived at by a mere subtraction from the former. But this is not the case where the circumstances embodied in the major charge do not necessarily and according to the definition of the offence imputed by that charge constitute the minor offence also. The principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter. The section is not intended to apply to a collateral offence. It is not open to a Court to find a man guilty of the abetment of an offence on a charge of the offence itself. When a man is accused of murder, he may not be conscious that he will have to meet an imputation of collateral circumstances constituting abetment of it, which may be quite distinct from the circumstances constituting the murder itself. When, therefore, the Sessions Judge says that s. 457 warrants his convicting the accused of the abetment of murder on the original charge of murder itself without amendment, he departs from the intention of that section. For, although, under special circumstances, abetment is to be deemed equivalent to the principal offence, yet it is plain that a charge of the latter simply as such gives no intimation of a trial to be held on the former."

This section also enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those parts constitute a minor offence.—*Govt. of Bengal* v. *Mahaddi*, I. L. R. 5 Cal. 871 : (S. C.) 6 C. L. R. 349. See remarks of SARGENT, C. J., in *Emp.* v. *Appa Sabhana Mendre*, I. L. R. 8 Bom. 200. In the former case the accused were charged under s. 149, coupled with s. 325 of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt, and it was held that the verdict was legally sustainable, although that offence did not form the subject of a separate charge. See *Emp.* v. *Harai Mirdha*, I. L. R. 3 Cal. 189.

The offence of house-trespass, as described in s. 452 of the Penal Code, cannot be said to be any part of the charge either of dacoity or of riot. Accordingly, where a prisoner was charged with the latter offences, it was held that a conviction for house-trespass was bad where the charge of that offence had not been read out and explained to him and he was not called on to plead to it.—*Queen* v. *Sulamut Ali*, 23 W. R. Cr. 59.

Where a dacoity was committed at Velanpor, a village in the territory of the Gaya Kevad, and a part of the stolen property was found in British territory, where it had been concealed, it was held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor, although had Velanpor been in British territory, the subsequent acts in the process of taking away the property might in the legal sense have coalesced with the first and principal one, so as to give jurisdiction under s. 67 of Act X of 1872 (s. 181 of this Code) in each district in which the property was conveyed.—*Reg.* v. *Lakhya Govind*, 1. L. R. 1 Bom. 50. In that case the accused were convicted of dacoity, but the conviction was, on the facts stated, altered to one of retaining stolen property known to have been obtained by dacoity. See *Penal Code, s.* 412.

Framing of Separate Minor Charges.—The High Court at Calcutta considered that, under the provisions of s. 457 of the Criminal Procedure Code of 1872, it was unnecessary to frame separate charges in respect of minor offences of the same class included in an offence of a graver character with which an accused person was charged.—*Cal. H. C. C. O., No.* 9 *of* 29*th August* 1878 ; *Wilkins*, p. 112.

What persons may be charged jointly.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately as the Court thinks fit ; and the provisions contained in the former part of this Chapter shall apply to all such charges.

Illustrations.

(*a*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft and B alone with the two other thefts.

Where an order was passed under s. 107 of the Code requiring more persons than one to show cause why they should not severally furnish security for keeping the peace it was held by

MAHMOOD J., that the provisions of s. 239, read with s. 117, were applicable, subject to such modifications as the latter section indicates, and to such procedure as the exigencies of each individual case might render advisable in the interests of justice, and that a joint inquiry in the case of such persons was not *ipso facto* illegal.—*Emp.* v. *Abdul Kadir*, I. L. R. 9 All. 462.

Persons required to show cause why they should not give security to keep the peace are not, apparently, accused persons, nor are they charged with an offence.—See *Baroda Kant Roy* v. *Korimuddi*, 4 C. L. R. 454.

In prosecutions for giving false evidence under s. 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, tried separately. *Reg.* v. *Kuresm*, 11 W. R. Cr. 16: *Bagga Singh*, Punj. Rec., 1888, p. 100. It is wholly erroneous to include them in one joint trial.—*Emp.* v. *Niaz Ali*, I. L. R. 5 All. 17. Similarly, it was laid down by the Calcutta High Court that two or more persons committing acts of perjury on different occasions ought not to be tried on one charge.—*Cal. H. C. Cr. L., 20th July* 1885: 2 W. R. Cr. 2.

In the case of *Nathu Sheik* v. *Emp.*, I. L. R. 10 Cal. 405, four persons were accused of having given false evidence in the same proceeding, and the Sessions Judge, while professing to try each accused person separately, heard the evidence of the witnesses only once. The High Court held that this was substantially trying the four prisoners together, and was an improper mode of procedure.

In the case of *Pulisanki Reddi* v. *Queen*, I. L. R. 5 Mad. 20, the convictions of 14 persons, who were charged together with distinct offences (committing nuisances) under ss. 290 and 291 of the Indian Penal Code, were set aside.—See *Emp.* v. *Kutti*, I. L. R. 11 Mad. 441.

The trials of the respective members, of two opposing factions in a riot ought to be kept entirely distinct.—*Hossein Buksh* v. *Emp.*, I. L. R. 6 Cal. 96: (S. C.) 6 C. L. R. 321: *Emp.* v. *Lochan*, Weekly Notes, 1881, p. 28: see *Emp.* v. *Abdul Kadir*, I. L. R. 9 All. 462. The members of each faction should be tried separately. It is wrong to commit the members of both parties for trial together upon joint charges, as if they had had one common object.—*Queen* v. *Sheikh Bazu*, 8 W. R. Cr. 47: (S. C.) 4 Wym. Cr. Rul. (F. B.) 13: *Queen* v. *Purzoolla*, 9 W. R. Cr. 33: but in the case of *Bachu Mullah* v. *Sia Ram*, I. L. R. 14 Cal. 358, it was held that under the circumstances of the particular case, the irregularity was cured by s. 537.

Upon trial of A for murder, and B for abetment thereof, a confession by A implicating B cannot be taken into consideration against B.—*Barli* v. *Emp.*, I. L. R. 7 Mad. 579. But see *Reg.* v. *Govind Babli Raul*, 11 Bom. H. C. R. 278, where, after the trial had commenced, the charge against the first prisoner, who had made a confession, was altered from that of murder to abetment of murder, and his confession was used, under s. 30 of the Evidence Act, [see amendment of this section by Act III of 1891, s. 4], against his co-prisoner, who was charged throughout with abetment of murder only.

A conviction of a person who is tried jointly with other persons for the same offence cannot proceed merely upon the uncorroborated confession of one of such other persons.—*Emp.* v. *Dosa Jiva*, I. L. R. 10 Bom. 231: *Emp.* v. *Ashootosh Chuckerbutty*, I. L. R. 4 Cal. (F. B.) 483: (S. C.) 3 C. L. R. 270:—*See Mad. H. C. Pro., 12th November* 1866; *Weir*, p. 8.

Where two prisoners are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other.—*In the matter of David*, 5 C. L. R. 574.

Where several persons were charged together with offences under ss. 148, 302, 324, and 326 read with s. 149 of the Penal Code, and the Sessions Judge, when about to examine the prisoners, required all but the prisoner under examination to withdraw from the Court, until his turn for examination came round, and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from Court, it was held that the evidence so given was inadmissible.—*Emp.* v. *Chandra Nath Sirkar*, I. L. R. 7 Cal. 65: (S.C.) 8 C. L. R. 352. See also *In re Chukowri Lall*, 13 C. L. R. 275. A course similar to that in the case of *Emp.* v. *Chandra Nath Sirkar*, I. L. R. 7 Cal. 65: (S. C.) 8 C. L. R. 352, was pursued in the case of *Emp.* v. *Lakshman Bala*, I. L. R. 6 Bom. 124, and the Bombay High Court, following the decision of the Calcutta High Court, also condemned the practice.

Withdrawal of remaining charges on conviction on one of several charges.

240. When more charges than one are made against the same person and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

Section 494, *infra*, provides that any public prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person, and upon such withdrawal, if it is made before a charge has been framed, the accused shall be discharged; if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted. See *Amir Chand*, Punj. Rec., 1889, p. 79.

The "officer conducting the prosecution" may, where he has had permission, be an officer of Police.—*S.* 495, *post*.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

A summons-case is a case relating to an offence not punishable with death, transportation, or imprisonment for a term exceeding six months.—*S. 4 (t), supra.*

Evidence of Witnesses who appear to be giving False Evidence to be recorded at length in the Vernacular.—When, during the investigation of a complaint under Chap. XX of the Code of Criminal Procedure, it may appear to the Magistrate that a witness is giving false evidence, so that criminal proceedings against such witness are likely to be necessary, the Magistrate will exercise a sound discretion in taking down, under s. 356, at least the evidence to this particular witness at length in the manner prescribed in ss. 356, 357, and 360 of Act X of 1882.—*Cal. H. C. C. O. No. 4 of 30th March 1864 ; Wilkins*, p. 112.

In the investigation of a complaint which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons, and the other a warrant-case, the procedure should be that for warrant-cases.—*Rajnarain Koonwar* v. *Lala Tamoli Raut*, I. L. R. 11 Cal. 91.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted ; but it shall not be necessary to frame a formal charge.

Personal attendance of an accused person may be excused by the Magistrate under s. 205, *supra*. See note to that section.

It should be clearly stated to the accused that he is about to be put on his trial, and what is the nature of the offence with which he is charged.—*In re Acharjee Lall*, 3 C. L. R. 87.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him ; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Where a written defence is tendered in a case tried under this Chapter, the Magistrate is not bound to take down the defence of the accused by personally examining him.—*Dila Mundul* v. *Kally Shaha*, 10 W. R. Cr. 63 : *Shib Ram*, Punj. Rec., 1890, p. 3.

Procedure when no such admission is made

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

The first paragraph corresponds with Act X of 1872, s. 207 (see also Act IV of 1877, s. 121), and the last two paragraphs, with Act X of 1872, s. 361, and Act IV of 1877, s. 142.

Section 355, *infra*, provides that in summons cases, tried by a Magistrate other than a Presidency Magistrate, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, such memorandum to be written and signed by the Magistrate with his own hand and to form part of the record.

The record to be made in Presidency Magistrates' Courts is provided for by s. 362, *infra*.

A Magistrate is bound to examine all the witnesses whom an accused person may produce for his defence.—*Ameer Chand Nohatta, Petitioner*, 13 W. R. Cr. 63. And a conviction by a Magistrate who has refused to examine a witness formally tendered on behalf of the accused is absolutely illegal.—*Queen* v. *Mahima Chandra Chuckerbutty*, 4 B. L. R. Appx. 77.

Though this section imposes on the parties the duty of producing their evidence in summons-cases, the Court should, though not bound to do so by law, before convicting an accused person in such a case, take the precaution to ascertain from him whether he has evidence to produce in his defence, and, if he says that he has, but his witnesses are not present in Court, should consider whether he should be allowed a further opportunity of bringing or summoning through the Court his witnesses.—*Emp.* v. *Jewan Singh*, Punj. Rec., 1884, p. 9.

Duty of Prosecution.—It is the *primâ facie* duty of the prosecution to call all the persons who are shown to be connected with the transactions connected with the prosecution, and who from such connection must be able to give material evidence. If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution, and the only thing that can relieve the prosecution from calling such witnesses is the reasonable belief that, if called, they would not speak the truth.—*In re Dhunnoo Kazi*, I. L. R. 8 Cal. 121: *Emp.* v. *Stanton*, I. L. R. 14 All. 524: *Emp.* v. *Kali Prosonno*, I. L. R. 14 Cal. 245; see *Emp.* v *Rankhandi*, I. L. R. 15 All. 6. It must be borne in mind that no corresponding inference can be drawn against the accused.—*In re Dhunnoo Kazi*, I. L. R. 8 Cal. 121. See *Emp.* v. *Tulla*, I. L. R. 7 All. 904.

All persons who are alleged or known to have knowledge of the facts ought to be brought before the Court and examined.—*Emp.* v. *Ram Sahai Lall*, I. L. R. 10 Cal. 1070. See note to s. 492, *post*.

Court Fees.—Where a complainant is required to pay fees or expenses for summoning witnesses under this section and fails to do so, the Magistrate must deal with the case on the evidence before him, and is not justified in dismissing the complaint under s. 247, *infra*.—*In re Koraputa* v. *Monappa*, I. L. R. 5 Mad. 160.

In non-cognizable cases, applications or petitions containing a complaint or charge of any offence are chargeable with a fee of 8 as. (Court-Fees Act, VII of 1870, Sched. II (1) (b)). Under s. 13 of the Act, where the application is made verbally and the examination of the complainant is reduced to writing, a like fee must be paid. Section 31 provides that, on conviction of the accused person, the Court shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid in the petition or application, or in the examination of the complainant, &c., and also the fees paid by complainant for serving processes. Fees so ordered to be repaid are to be recovered as if they were fines.

Acquittal.

245. If the Magistrate, upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

If he finds the accused guilty, he shall pass sentence upon him according to law.

For form of warrant of commitment on a sentence of imprisonment or fine if passed by a Magistrate, see Sched. V, No. 29.

Subordinate Magistrates should submit to the District Magistrate a calendar of every case in which conviction takes place within twenty-four hours from sentence being passed. Such a course of procedure enables the District Magistrate at once to take measures towards rectifying injury done by an illegal sentence.—*Bom. H. C. Cir.* 43.

A Court is bound to pass some sentence if it records a verdict of guilty, though the sentence may be only nominal (*Mad. H. C. Pro., 12th August* 1869; *Weir*, p. 37); but a Judge in trials by jury is not warranted in passing a merely nominal sentence, because he cannot concur in a jury's verdict of guilty. In doing so, he would usurp the functions of a jury. He is bound to pass a sentence adequate to the offence found by the jury to have been committed.—*Mad. H. C. Pro., 8th November* 1866; *Weir*, p. 37.

A complaint may be both frivolous and false. The award of compensation for making a frivolous complaint does not preclude the Magistrate who makes it from subsequently sanctioning a prosecution for making a false complaint.—*Mad. H. C. Pro., 12th November* 1875; *Weir*, p. 5. He may make an order directing the complainant to make amends to the accused, notwithstanding that the complainant is to take his trial for perjury.—*Reg.* v. *Roopun Rae*, 15 W. R. Cr. 9: (S. C.) 6 B. L. R. 296.

The following rules as to military offenders are in force in Bombay and the Punjab:—When any person serving under the Government of Bombay, in the Military Department, is convicted in a Criminal Court, such Court shall inform the officer commanding the regiment or corps to which the convict belongs.—*Bombay Gazette*, 1879, pp. 471, 475.

In every case in which a military officer or a soldier is sentenced by a Criminal Court to a fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court shall send a copy of its final order *proprio motu* to the immediate superior of the person convicted. Whenever a soldier is committed to jail, whether for trial or under sentence, his military rank should always be stated in the warrant of commitment in order that due notice may be given to the military authorities of the day and hour on which the imprisonment of such person will expire as required by the 33rd section of the Mutiny Act.—*Smyth*, p. 148.

Copies of Convictions and Sentences of Persons in the Military Department.—Judicial Commissioners, Sessions Judges, and Magistrates must forward to the Military Department of the Government of India a copy of the conviction and sentence in all cases in which persons serving under the

Government of India in that department are convicted in a Criminal Court.—*Cal. H. C. C. O., 17th July* 1871; *Wilkins*, p. 139.

As to convictions of other Government servants, see Notification, Government of India, 7th August 1868.

Where an accused has been acquitted after the whole of the evidence for the prosecution in the case has been recorded, compensation may be awarded under s. 560, *post*.—*Mona Sheikh* v. *Ishan Bardhan*, I. L. R. 6 Cal. 581: *Emp.* v. *Panda Valad Gopala*, I. L. R. 10 Bom. 199: *Number* v. *Amiu*, I. L. R. 5 Mad. 381: *Ali Ahmad* v. *Nathu*, Punj., Rec., 1884, p. 19: *Gulab* v. *Sant Ram*, *ib.*

Finding not limited by complaint or summons.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this Chapter which, from the facts admitted or proved, he appears to have committed whatever may be the nature of the complaint or summons.

It was held under Act X of 1872, that notwithstanding the extent to which the complaint itself may go, and notwithstanding the terms of the summons, whatever they may be, the Magistrate may convict an accused person who has been summoned before him on the footing of a complaint of any offence which is the subject of the definition in s. 148 [s. 4 (*d*) of this Code], if he thinks that the facts established by the complainant and his evidence only amount to an offence within that section.—*Mudoosoodun Sha* v. *Haridass Dass*, 22 W. R. Cr. 40.

Non-appearance of complainant.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

The former Code provided that if the complainant did not appear, the Magistrate should dismiss the complaint; and under s. 212, the dismissal of a complaint operated as an acquittal. See *Nund Lall Sootrodhur* v. *Bhagirutty Sootrar*, 10 W. R. Cr. 31: *Eastern Bengal Railway Co.* v. *Kali Dass Dutt*, 23 W. R. Cr. 63: *Irfan Biswas* v. *Jinnat Bibee*, 25 W. R. Cr. 63. The present Code, it will be seen, provides for the acquittal of the accused, unless the Magistrate thinks proper to adjourn the case.

As to dismissal of a complaint after examining the complainant, see s. 203, *supra*. Unless a charge has been drawn up, no order of acquittal can be passed.—*Reg.* v. *Japti Ahir*, 22 W. R. Cr. 25.

If the proceedings before the Magistrate have been so irregular as to amount to no trial, the acquittal will be invalid.—*Mad. H. C. Pro., 17th August* 1875; *Weir*, p. 7.

Adjournments.—It is not an irregularity to adjourn the trial for the purpose of allowing the accused to secure the attendance of his witnesses.—*In re Dinoo Roy*, 16 W. R. 21.

If, when a case has been adjourned, the complainant does not appear upon the day fixed for the hearing, the Magistrate may acquit the accused.—*Mudoosoodun Sha* v. *Haridass Dass*, 22 W. R. Cr. 40. Ordinarily the order for adjournment must be made in the presence and hearing of the parties.—*Mad. H. C. Pro., 24th February, and 17th August* 1875; *Weir*, p. 2.

A case having been transferred from the file of one Magistrate to that of another was, on the day fixed, called on for hearing, but the complainant not appearing, the case was dismissed under this section. It appeared that the complainant and his witnesses, though not in attendance in the Magistrate's Court, were present in another Court in the same Court-house, the complainant being under the impression that his case had been transferred to the Magistrate of that Court. PRINSEP and TOTTENHAM, JJ., treated the case as if the complainant had been present in Court, holding that, under the circumstances, the provisions of the section had been improperly applied.—*In re Romanath Pal* v. *Behari Bagdi*, 13 C. L. R. 303.

Where a complainant is required to pay fees or expenses for summoning witnesses under s. 244 and fails to do so, the Magistrate must deal with the case on the evidence before him, and is not justified in dismissing the complaint under this section.—*In re Korapulu* v. *Monappa*, I. L. R. 5 Mad. 160. As to fees and processes in non-cognizable cases, see note to s. 244, *supra*.

A Magistrate, it was held, was not bound, before acquitting a person under this section, to wait till the Court is about to close for the day to give an absentee complainant an opportunity of appearing.—*Kuttiyali* v. *Pari Makri*, I. L. R. 7 Mad. 356: see *Rangasami Ayyangar* v. *Narasimhulu*, I. L. R. 7 Mad. 213.

Withdrawal of complaint.

248. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

When an offence is a "warrant" and not a "summons" case, a Magistrate ought to proceed with an inquiry or trial notwithstanding that the complainant desires to withdraw if he finds the elements of an offence on the facts set forth in the complaint.—*In re Ganesh Narayan Sathe*, I. L. R. 13 Bom. 600, unless the case is compoundable under s. 345.

In cases of contempt of the lawful authority of a public servant, the complainant referred to in this section is the public servant whose authority has been resisted, and not the person injured by the resistance.—*In re Muse Ali Adam*, I. L. R. 2 Bom. 653.

The fact that an accused person has been sent up by the Police does not prevent an offence which is legally compoundable from being compromised under s. 345, *infra*.—*Emp.* v. *Nowab Jan*, I. L. R. 10 Cal. 551.

This Chapter only refers to summons-cases. See *Somu* v. *Reg.*, I. L. R. 6 Mad. 316.

A District Magistrate has no jurisdiction to revive a charge which a Deputy Magistrate has allowed to be withdrawn.—*Reg.* v. *Zoohurul Huq*, 25 W. R. Cr. 64: see *Emp.* v. *Nowab Jan*, I. L. R. 10 Cal. 551. See notes to s. 253, *post*.

Section 345, *infra*, provides for the compounding of the offences therein enumerated in some cases without the permission of the Court and the composition of an offence under that section amounts to an acquittal.—See *Emp.* v. *Khushal Ram*, Punj. Rec., 1888, p. 35.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

250. (*This section has been repealed and re-enacted in a modified form as s. 560, post, by Act IV of* 1891.)

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

A warrant-case is a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.—*S. 4 (s), supra*.

In the investigation of a complaint which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons-case and the other a warrant-case, the procedure to be adopted is that prescribed for warrant-cases.—*Rajnarain Koomwar* v. *Lala Tamoli Raut*, I. L. R. 11 Cal. 91.

Evidence for prosecution.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

See note to s. 208, *supra*.

This section directs that the Magistrate *shall* proceed to hear the complainant and take all such evidence as may be produced. Where, therefore, in a warrant-case, the complainant and his witnesses were present, a Magistrate without examining them discharged the accused on the report of a Police-officer, it was held that the order of discharge was illegal.—*Meer Azeem Ali* v. *Hurnam Dass*, 24 W. R. Cr. 9. The last clause of s. 253, however, allows a Magistrate now, if he considers the charge groundless, to discharge an accused person before examining the complainant and his witnesses; but, if he does so, he must record his reasons for doing so.

Evidence.—As to taking evidence, see further notes to next section.

For form of summons to witnesses, see Sched. V, No. 31.

"When a prisoner is once arrested under a warrant, he should be brought up promptly before the Magistrate, and the Magistrate has then no authority to further detain him in custody, or to

remand him to prison, without some reason made manifest to him either in the shape of sworn testimony given before him, or in some other form which can be put upon the record and which is sufficient to justify him in sending the prisoner to prison, there to be detained for a limited period before further examination—a period which is never in any case to exceed fifteen days."—*In re Abdool Kadir*, 11 B. L. R. Appx. 11 : *Manikam* v. *Queen*, I. L. R. 6 Mad. 63.

Adjournments.—As to remand, see also s. 344, *post* : *Ponnusami Chetti* v. *Queen*, I. L. R. 6 Mad. 69.

Section 496, *infra*, deals with the taking of bail for the appearance of the accused.

Chapter XXV (ss. 353-357) deals with the mode of taking and recording evidence in inquiries and trials. The taking of evidence by Presidency Magistrates is specially provided for by s. 362, *post*.

Section 340 provides that every person accused before a Criminal Court may of right be defended by a pleader. [As to what persons are included in the term 'pleader,' see s. 4 (*a*) and the Legal Practitioners' Act, XVIII of 1879, amended by Act IX of 1884.]

Section 493 provides for the conduct of the prosecution by pleaders or other persons empowered or permitted to conduct the prosecution.

The following circular has been issued by the Calcutta High Court as to the examination of complainants and witnesses. As regards the examination of complainants, witnesses, or persons accused of the commission of any offence under inquiry or trial before a Criminal Court, the following rules should be strictly observed in every case by Magistrates and Sessions Judges :—

(*a*) Every witness shall be examined *viva voce* in open Court.

(*b*) A Magistrate or Judge shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

(*c*) If, after the examination of a witness has commenced, the Magistrate or Judge is compelled to attend to any other business, the examination of the witness shall be suspended as long as such other business is being attended to.

(*d*) The examination of a witness shall not be interrupted for the purpose of enabling the Magistrate or Judge to attend to other business unless such business is of an urgent nature.

(*e*) It shall be the duty of every Appellate Court subordinate to the High Court to examine the memorandum of the evidence made by the subordinate Court, and to report to the High Court cases in which it shall appear that the above rules have not been strictly and properly attended to.

(*f*) The evidence of every witness shall invariably be recorded in the presence of the officer who may decide the case, except in the cases provided for by ss. 349 and 350 of the Code of Criminal Procedure, in which the re-calling and re-examination of the witness is optional with the superior Magistrate.

(*g*) After the examination of witnesses has commenced, the trial or preliminary inquiry under Chap. XV of the Code of Criminal Procedure should be proceeded with until all the witnesses in attendance have been examined, those for the prosecution being first examined ; and if any witness be detained for a longer period than two days, the Magistrate should record a memorandum, stating the reasons of such detention.

(*h*) When it is deemed necessary to adjourn the hearing of a case, the adjournment shall be for as short a time as possible, and no person accused of any offence shall be remanded for any period exceeding fifteen days.—*S. 344, C. C. P.*

(*i*) Every Sessions Judge and Magistrate shall sit daily and punctually at the hour appointed for the opening of his Court, unless prevented by circumstances which are to be recorded in the proceedings of the Court.—*Cal. H. C. C. O. No. 6 of 16th May* 1864 ; *Wilkins*, pp. 6 and 7.

Duty of the Prosecution.—All persons who are alleged to know or to have knowledge of the facts ought to be brought before the Court and examined.—*In re Dhunnoo Kazi*, I. L. R. 8 Cal. 121 : *Emp.* v. *Ram Sahai Lall*, I. L. R. 10 Cal. 1070 The only thing that can relieve the prosecution from calling such persons is the reasonable belief that if called they will not speak the truth. —See *Emp.* v. *Stanton*, I. L. R. 14 All. 521 : *Emp.* v. *Kali Prosonno*, I. L. R. 14 Cal. 245 : *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6. See cases cited under this head in notes to ss. 244, 254, and 492.

Discharge of accused.

253. If, upon taking all the evidence referred to in section 252, and taking such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Evidence to be taken.—The last clause of this section is new. Under the former Code, an order of discharge could not be passed until the evidence of all the witnesses named for the prosecution had been taken (*Soondur Lukur* v. *Ramkumar Sirdar*, 20 W. R. Cr. 67 : *Queen* v. *Parasuruma Naikar*, I. L. R. 4 Mad. 329 : *Sreenath Mundle* v. *Sreeram Rajput*, 24 W. R. Cr. 62), including that of the complainant himself.—*Meer Azim Ali* v. *Hurnam Dass*, 24 W. R. Cr. 9.

It is not incumbent on the Magistrate to *summon* every person named as a witness by the complainant, for this section must be read with the previous one, which vests a discretionary power in the Magistrate as to summoning witnesses. See *Jaldhari Singh* v. *Shunkar Dayal*, 23 W. R. Cr. 9. But, a Magistrate should not refuse to examine witnesses, because their evidence will be to the same effect as that already taken for the prosecution.—*Emp.* v. *Hematulla*, I. L. R. 3 Cal. 389 : *Emp.* v. *Kashi*, I. L. R. 2 All. 347.

Where a complaint has been made before a Magistrate, it was held in Calcutta under the Code of 1872, that it was illegal to sanction a prosecution against the complainant under s. 211 of the Indian Penal Code for making a false charge, without examining all the witnesses, whom the complainant in the original case wished to produce.—*In re Bipopi Bhagat*, 4 C. L. R. 134 : *In re Ramick Lall Mullick*, 7 C. L. R. 382 : *Emp.* v. *Kirtimitul*, I. L. R. 6 Cal. 405 : (S. C.) 7 C. L. R. 467 : *In re Sakhina Bibi*, 8 C. L. R. 387 : (S. C.) I. L. R. 7 Cal. 87 : *In re Chukradhar Potti*, 8 C. L. R. 289. See *In re Gyan Chunder Roy* v. *Protap Chunder Das*, I. L. R. 7 Cal. 208 : (S. C.) 8 C. L. R. 257 : *Syed Nissar Hossain* v. *Ramgolam Singh*, 25 W. R. Cr. 10.

Discharge.—The proviso to s. 253 has made an alteration in the law as it was under Act X of 1872, by allowing, in warrant cases, a Magistrate, for reasons to be recorded, to discharge an accused without examining all the witnesses produced by the complainant. The insertion of this proviso appears to get over the case of the Calcutta High Court cited, but apparently it would now be necessary to hold a preliminary inquiry under s. 476 before granting sanction to prosecute. See *Emp.* v. *Bhawani Prosad*, I. L. R. 4 All. 182 : *Emp.* v. *Abdul Hasan*, 1 All. 497 : *Queen* v. *Surbhanna Gaundan*, 1 Mad. H. C. R. 30—cases under the Code, of 1872 which allowed the procedure suggested, even under that Code, where the accused had not been prejudiced.

See further the notes to ss. 195, 200, 203, 206, and 209, *supra*.

The mere absence of the complainant is not sufficient to justify the discharge of the accused in warrant-cases which are not compoundable.—*Govinda Dass* v. *Dulali Dass*, I. L. R. 10 Cal. 67 : (S. C.) 13 C. L. R. 405.

Under s. 437 the High Court or Court of Session may direct further inquiry to be made in the case of a person discharged under this section.

Section 259, *post*, provides that in warrant cases, "when the proceedings have been instituted on complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused."

The High Court at Calcutta (PRINSEP and O'KINEALY, JJ.) held that the Magistrate was not competent to dismiss a non-compoundable warrant-case because of the absence of the complainant. They expressed an opinion that in warrant-cases not coming within s. 259, a Magistrate, except in cases coming within the last clause of s. 253, is not competent to pass an order of dismissal or discharge in consequence of the absence of the complainant. — *Govinda Dass* v. *Dulali Dass*, I. L. R. 10 Cal. 67 : (S. C.) 13 C. L. R. 408.

No Charge.—Where no charge in writing has been drawn up and the prisoner has not been asked to make his defence, the Magistrate, if he thinks that no offence has been proved, can only discharge, and not acquit, the prisoner.—*Queen* v. *Sheriff*, 6 W. R. Cr. 13 : see also *Queen* v. *Bipro Dass*, 8 W. R. Cr. 45 : and *Jugobundhu Myti* v. *Goberdhan Bera*, 4 B. L. R. App. Cr. 1. See *Taba* v. *Hira Singh*, Punj. Rec., 1883, p. 76.

Effect of Discharge.—The discharge by the Magistrate is not final like an acquittal, and the Sessions Judge may order the accused to be put upon his trial notwithstanding his discharge by the Magistrate.—*In re Shoodun Mundle*, 5 W. R. Cr. 58.

If a prisoner has been discharged by a Subordinate Magistrate, and the District Magistrate considers that the order of discharge was improper, he cannot, if no further evidence against the accused is procurable, revive the proceedings before the Subordinate Magistrate; the only course for him to adopt is to refer the proceedings for the opinion of the High Court.—*In re Mohesh Mistree*, I. L. R. 1 Cal. 282, where the case of *Sidya-bin Satya*, quoted in Mr. Justice Prinsep's Criminal Procedure Code, 5th Edn., was dissented from. See also *Emp.* v. *Gowadapa-bin Venkugowda*, I. L. R. 2 Bom. 534 : and *Queen* v. *Venguvayyangar*, I. L. R. 6 Mad. 25. See notes to ss. 437 and 436, *infra*. A District Magistrate cannot revive before himself proceedings against an accused who has been discharged (*Emp.* v. *Donnelly*, I. L. R. 2 Cal. 405); but if further evidence is available, the proceedings may be revived.—*Emp.* v. *Donnelly*, I. L. R. 2 Cal. 405 : *Ishen Chunder Kurmokar* v. *Hurry Dogyal Kurmokar*, 21 C. L. R. 203.

The District Magistrate has no power to revive a prosecution in a case where the accused has been improperly discharged under this section by a Magistrate having jurisdiction to try the case (*Queen* v. *Venguvayyangar*, I. L. R. 6 Mad. 25); and where there has been a full inquiry by a competent Court, and the accused has been discharged, a District Judge has no power under s. 437, *post*, unless further evidence has been disclosed, to direct a further inquiry.—*Jeebun Kisto Ray* v. *Shib Chunder Das*, I. L. R. 10 Cal. 1027; but see *Emp.* v. *Papadir*, I. L. R. 7 Mad. 454.

Where a Magistrate, after examining the witnesses for the prosecution and the accused themselves, took evidence for the defence without having drawn up a charge against them, and finally, finding the offence not proved, ordered them to be discharged under this section, it was held that the order was contrary to law and most unfair to the accused, and ought to have been treated as an order of acquittal under s. 458, *post*.—*Taba* v. *Hira Singh*, Punj. Rec., 1883, p. 76.

Legally, and for the purposes of a commitment, the Magistrate and Joint Magistrate have equal powers, and the Joint Magistrate is not bound to act upon the instructions of the Magistrate in a judicial proceeding, such as the commencement of a preliminary inquiry. *Reg.* v. *Pitkoo Goala*, 8 W. R. Cr. 61.

Charge to be framed when offence appears proved

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is

competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

As to cases in which the Appellate Court may consider the Magistrate had not power to punish adequately—see *Emp.* v. *Abdul Rahiman*, I. L. R. 16 Bom. 580.

A Magistrate is not confined to the charges contained in the complaint, and where a proper complaint has been made to him, if, on evidence, he finds that an offence different from that expressly charged has been committed, he has power to inquire and proceed against the accused with regard to the other offence.—*Reg.* v. *Dhondu Ramchandra*, 5 Bom. H. C. R. Cr. 100. When a Magistrate finds, in the course of an investigation, that the facts disclose an offence other than, or in addition to, that complained of, he is bound to adjudicate on the original charge, and should not dismiss it with leave to the prosecution to institute a fresh and more comprehensive complaint.—*Degumber Paul* v. *Kully Doss Dutt*, 8 W. R. Cr. 82.

Where a Magistrate tried and acquitted a person accused of an offence without preparing in writing a charge against him, it was held by PEARSON, J., that the omission did not invalidate the order of acquittal and render the order equivalent merely to an order of discharge.—*Emp.* v. *Gurdu*. I. L. R. 3 All. 129.

Duty of the Prosecution.—It is *primâ facie* the duty of the prosecutor to call all the persons as witnesses who are shown to be connected with the transaction connected with the prosecution, and who must be able to give material information. If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution, and the only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. (See *Emp.* v. *Stanton*, I. L. R. 14 All. 521: *Emp.* v. *Kali Prosonno*, I. L. R. 14 Cal. 245; *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6). No corresponding inference, it must be borne in mind, could be drawn against the accused.—*In re Dhunnoo Kazi*, I. L. R. 8 Cal. 121: *Emp.* v. *Ram Sahai Lall*, I. L. R. 10 Cal. 1027. See notes to ss. 244 and 402.

Examination of Accused.—Under s. 342 the power given to the Court to examine the accused at any stage of an inquiry or trial is to enable him to explain any circumstances appearing in the evidence against him.

It has been laid down by the Madras High Court, that it was not necessary for a Magistrate before preparing a charge under the corresponding Chapter of the former Code to examine more witnesses than are sufficient to convince him of the truth of the charge, and with that view it was competent to him to put questions under ss. 193 and 342 of Act X of 1872 (s. 342 of this Code) to the accused. The answers given to these questions, if any are given, will generally, it was said, have a great effect upon the question as to the witnesses necessary to be examined on the part of the prosecution; and if, after the complainant has been examined, questions put to the accused elicit answers which leave no doubt as to the commission of the offence, there seems to be no reason why the Magistrate should not then frame the charge and call upon the accused to plead.—*Mad. H. C. Pro.*, 16*th December* 1864; *Weir*, p. 45. This ruling of the Madras Court seems to suggest a procedure of a somewhat questionable nature, and appears to be at variance with the spirit of ss. 209, 253, and 342 of this Code. See notes to ss. 253 and 342, *post*, on the examination of accused persons.

Plea.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

A Magistrate, when he has prepared a charge against an accused person, is bound to, read it to him and to ask him if he wishes to have any witness summoned to give evidence on his behalf before the Sessions Court.—*Queen* v. *Hurnath Roy*, 2 W. R. Cr. 50.

Where a prisoner, on the charge being read and explained to him, pleads guilty, the Judge must record the plea, and not merely record a narrative of what occurred and of the statements made by the prisoner.—*Gulap Dhanuk* v. *Emp.* S. C. L. R. 471: (S. C.) I. L. R. 7 Cal. 96. An admission which does not admit all the elements of the charge is not a plea of guilty to the charge.—*Ibid*: *Queen* v. *Sonaoollah*, 25 W. R. Cr. 23: see *Reg.* v. *Gobardhan Bhuyan*, 4 B. L. R. Appx. 101.

Defence.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to re-call and cross-examine any witness for the prosecution present in the Court or its precincts.

If the accused puts in any written statement, the Magistrate shall file it with the record.

European British Subject.—Under s. 451 A (see Act III, of 1884, s. 7) a European British subject has the right before he enters on his defence under this section to claim that the trial shall be by a jury composed as prescribed by s. 451.—See ss. 451 and 452.

The provision that an accused person while making his defence may be allowed to re-call and cross-examine the witnesses for the prosecution has been expressly confined to cases where the witnesses are present in the Court or its precincts, as the power to re-call witnesses for the prosecution after they had left the Court was said to have been often abused for the purpose of harassment and delay. The next section, however, directs that an accused person may apply to the Magistrate for process to compel the attendance of any witness (whether he has or has not been previously examined) for the purpose of examination or cross-examination, and that the Magistrate must issue such process, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice, such ground to be recorded in writing.

Even in warrant-cases, perhaps, the more common practice is for the accused (as he has a right to do—Evidence Act, I of 1872, s. 138) to cross-examine the witnesses for the prosecution after their examination-in-chief. Formerly, where no charge was framed, and where an accused person had reason to suppose that this course might prejudice his defence by showing his hand before the prosecutor had made out a *primâ facie* case, it was usual to ask to be allowed to reserve cross examination until after the charge had been framed. Now, under ss. 256 and 257, an accused person may refrain from cross-examining the witnesses till after the charge has been framed, and rely upon his right under the latter section to have the witnesses re-called for cross-examination. See *Faiz Ali* v. *Koromodi*, I. L. R. 7 Cal. 28: (S. C.) 8 C. L. R. 325—a case decided under the old Code.

The alteration in the law will thus enable an accused person to reserve his cross-examination, until he is aware, "on the case for the prosecution being closed," of the specific charge against him. Knowing the case against him and the charge he has to meet, he will ordinarily be better able to direct his cross-examination to what on the evidence is material. See s. 289, *post*, as to trials before High Courts and Courts of Session.

The claim to re-call the witnesses for the prosecution is very different from the request made by the accused person to summon a witness under ss. 208 and 252.—*Bellilios* v. *The Queen*, 10 W. R. Cr. 53.

An accused person has always a right to cross examine every witness for the prosecution immediately after the examination-in-chief. In trials under this Chapter he is further entitled to re-call and cross-examine witnesses after the case for the prosecution is closed (*Mad. H. C. Pro., 17th May* 1867; *Weir*, p. 45), provided they are present in the Court or its precincts. When the charge has been framed and the defendant put on his defence, he has a right under this section to have the prosecutor's witnesses re-called for the purpose of cross-examination (*Bellilios* v. *The Queen*, 10 W. R. Cr. 53), provided they are within the precincts of the Court. And it is not necessary for the accused to shew that he has reasonable grounds for his application (*Reg.* v. *Amiruddin Fakeer*, 21 W. R. Cr. 29); nor is he precluded from exercising the right by reason of his having cross-examined them before he was put on his defence, or by reason of his not having *suo motu* expressed his wish to do so at the time he was called upon to enter on his defence, and when the witnesses were in attendance in the Court and did not require to be re-summoned.—*Queen* v. *Lall Singh*, 6 All. 270. A witness who has left the precincts of the Court may, if necessary, be re-summoned under the next section.

In the case of *The Queen* v. *Lall Mahomed*, 6 All. 284, TURNER, J., made the following observations as to the re-call of witnesses: "I am of opinion that the Magistrate ought not of his own motion to discharge the witnesses for the prosecution until the accused person has exercised or waived his right of cross-examination. When (as frequently happens) it becomes necessary to summon witnesses for the defence from a distance, and consequently to adjourn the hearing for some days, the necessity of retaining the witnesses for the prosecution must occasion considerable inconvenience to the witnesses and expense to the public. Therefore, the Magistrate should, in all cases before granting an adjournment, inquire of the accused if he desires to exercise his right of re-calling the witnesses for the prosecution, or consents to the discharge of any or all of them. If the accused consents to their discharge, and they are discharged accordingly, he is not, in my opinion, entitled to have them re-summoned as a matter of right, but it would be in the discretion of the Magistrate to re-summon them. Whether the Magistrate, before granting an adjournment, called upon the accused to exercise his right of re-calling the witnesses for the prosecution, need not now be determined. In the present instance, the Magistrate did not call upon the accused to exercise his right, and there is no sufficient proof that the accused consented to the discharge of the witnesses. He was probably not aware that he had any option in the matter, and therefore it would be an unsound inference from his silence that he consented to it."

An accused person in warrant-cases has an undoubted right to have the witnesses for the prosecution re-called for the purposes of cross-examination after the charge has been framed against him, unless he has waived that right. He may, no doubt, waive it by express words, and he may waive it by allowing the proper time in the course of this trial to go by without availing himself of the right. As a rule, the proper and convenient time in the course of the trial for the purpose of cross-examination of the witnesses for the prosecution is at the commencement of the accused person's defence. It is obviously expedient that the witnesses for the prosecution, if they are to be cross-examined at all, should, as a rule, be cross-examined before the witnesses for the defence are examined, rather than afterwards. Sections 217, 218, and 219 (of Act X of 1872) read together merely lay down that when the charge has been framed upon the footing of the evidence produced by the prosecution, then, and not before, the accused person shall be put upon his defence; that to support this he has the right to adduce the testimony of witnesses and other evidence, and incidental to this right, or rather as a branch of it, he has the right to have the witnesses for the prosecution re-called by the Magistrate in order that he may cross-examine them, and that the

Magistrate shall afford the accused the requisite means and opportunity of, in this way, making out his defence by issuing summons to witnesses whether persons who have already been examined or not, and adjourning the trial, &c., when in his discretion it seems necessary to do so. The order in which the testimony of witnesses or other evidence is to be taken, and examination or cross-examination had is, as in all the other judicial trials, left to the discretion of the Magistrate, which *ought* to be exercised not capriciously, but in such a way as to best ensure simplicity of procedure and a fair trial, and to promote the ends of justice. There is not any rigid rule that the only time at which an accused person can ask for the re-call of the witnesses for the prosecution is the time when he is called upon to enter upon his defence.—*Khurruckdharee Sing, Petitioner*, 22 W. R. Cr. 44, *per* PEARE and MORRIS, JJ.; and see *Queen* v. *Ram Kishen Halwai*, 25 W. R. Cr. 48.

A Magistrate cannot, at least if they are within the Court or its precincts, refuse to allow witnesses, whom he allowed to be cross-examined by the accused previous to the preparation of a charge, to be re-called and cross-examined after the accused has been put upon his defence under this section. Witnesses so re-called at the instance of the accused are still to be treated as witnesses for the prosecution.—*In re Thakoor Dyal Sen*, 17 W. R. Cr. 51: *Nobin Chand Banerjee, Petitioner*, 25 W. R. Cr. 32: *Tatturi Venkayya* v. *The Queen*, I. L. R. 4 Mad. 130.

In the case of *Emp.* v. *Baldeo Sahai*, I. L. R. 2 All. 253, the charge having been read to the accused, he stated his defence to the same, upon which the Magistrate, the witnesses for the prosecution being in attendance, called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses for the defence, who were not in attendance. The Magistrate then discharged the witnesses for the prosecution and adjourned the trial for the production of the witnesses for the defence. SPANKIE, J., held, that the accused was not entitled to have the witnesses for the prosecution summoned in order that they might be cross-examined by the accused on the date fixed for the examination of the witnesses for the defence.

Cross-examination of Witness called by Court.—It was held by JACKSON AND TOTTENHAM J.J., that witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box in order that the defence may have an opportunity of exercising the right of cross-examination, and *a fortiori*, if such witnesses are called and examined by the Court, the accused should be allowed to cross-examine them.—*Emp.* v. *Girish Chunder Talukdar*, I. L. R. 5 Cal. 614: (S. C.) 5 C. L. R. 364; but in the case of *Emp.* v. *Kaliprosonno Dass*, I. L. R. 14 Cal. 245, TREVELYAN, J., held that in a trial before a Sessions Court the prosecution was not bound to tender for cross-examination all witnesses called before the committing Magistrate, but was only bound to have them present in Court for the accused to call them or not as he thought fit. See *Reg.* v. *Fattah Chawi Vastu Chand*, 5 Bom. H. C. R. Cr. 85. The case of *Emp.* v. *Kaliprosonno*, I. L. R. 14 Cal. 245, was followed by the Allahabad High Court in *Emp.* v. *Stanton*, I. L. R. 14 All. 521. See *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6. See note to s. 540, *post*.

257. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Process for compelling production of evidence at instance of accused.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Compare ss. 208 and 252, *supra*.

The section does not specify at what time the application must be made. It might apparently be made at any time, and, if made *bond fide*, the Magistrate would be bound to grant it, requiring, if necessary, a deposit to defray expenses of witness. Under the former Code it was held, that an accused person might abandon his right to have witnesses re-called, and that where he did so, he could not insist on his right.—*Tatturi Venkayya* v. *Queen*, I. L. R. 4 Mad. 130: *Reg.* v. *Lall Mahomed*, 6 N. W. P. 284: and *Thakoor Dyal Sen's* case, 17 W. R. Cr. 51. See further cases cited in note to s. 256.

The only grounds on which the Magistrate may refuse the application are those specified in the section.

Where a Magistrate, trying an offence, rejected an application that a certain person might be examined on behalf of the accused either in Court or by commission, without recording his reasons for refusing to summon such person as required by s. 362 (of Act X of 1872), the conviction of the accused person was set aside.—*In re Sat Narain Singh*, I. L. R. 3 All. 392. See s. 537, *post*.

In the case of *Deala Mahton*, I. L. R. 6 Cal. 714: (S. C.) 8 C. L. R. 70, on the case on both sides being closed, the Magistrate issued a summons to a witness to give evidence, whereupon the accused filed a petition praying to have certain witnesses summoned to give evidence to rebut that of the witness called by the Magistrate. The petition was refused, no reason being recorded. The High Court, on revision, held, that the Magistrate was bound either to take the evidence or record his reasons for not doing so, and quashed the conviction. The Court was of opinion that the fact that the accused stated, when the case closed, that he did not wish to examine witnesses then, was no

reason for refusing to summon his witnesses to meet fresh evidence taken by the Magistrate himself, after hearing the arguments on behalf of the defence.

A Magistrate, having once granted to the accused processes for attendance of witnesses, is bound to assist the accused in enforcing the attendance of the witnesses.—*Emp.* v. *Bhananjoi Chaudhuri* I. L. R., 10 Cal. 331. There certain witnesses who had been summoned for the accused failed to appear on the day of trial, and the Deputy Magistrate refused to adjourn the hearing or to issue fresh processes for the attendance of the witnesses, on the ground that they were all friends of the accused who might come to Court if the accused desired them, and convicted the accused. The High Court set aside the conviction. See *Gohar* v. *Emp.*, Punj. Rec., 1884, p. 48.

In the case of *The Queen* v. *Bholanath Mookerjee*, 7 B. L. R. 584, AINSLIE, J., held that, in a trial under Chap. XIV of Act XXV of 1861 (Chap. XXI of this Act), the Magistrate was not bound to summon any witness whom the accused might require. It was only discretionary with him to do so. PAUL, J., however, differed, being of opinion that the right of an accused person to have witnesses for his defence summoned during the pendency of his trial was an ordinary and natural right, not taken away, but affirmed by the Code. The Magistrate was bound to summon the witnesses, though it was discretionary with him to adjourn the trial.

The provisions of the Evidence Act as to examination, cross-examination, and re-examination of witnesses are contained in ss. 138 and 139 of that Act.

Witnesses re-called under this section on application of the accused are still to be treated as witnesses for the prosecution.—*In re Thakoor Dyal Sen*, 17 W. R. Cr. 51 : *Nobin Chand Banerjee, Petitioner*, 25 W. R. Cr. 32 : *Tulluri Venkayya* v. *Queen*, I. L. R., 4 Mad. 130.

258. If any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

Conviction.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

As to the procedure to be followed when, after the commencement of an inquiry or trial, the Magistrate finds that the case should be committed, see s. 347, *infra*.

For form of warrant of commitment on a sentence of imprisonment or fine, if passed by a Magistrate, see Sched. V, No. 29.

In every case in which a military officer or a soldier is sentenced by a Criminal Court to a fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court shall send a copy of its final order *proprio motu* to the immediate superior of the person convicted. And, whenever a soldier is committed to jail, whether for trial or under sentence, his military rank shall always be stated in the warrant of commitment in order that due notice may be given of the day and hour on which the imprisonment of such person will expire as required by the 33rd section of the Mutiny Act.—*Orders Government of India, No.* 1632, *dated 3rd October* 1871, *and No.* 37—1805, *dated 31st October* 1873 ; *Smyth*, p. 148 ; see also *Cal. H. C. C. O., No.* 6, *dated 17th July* 1871 ; *Wilkins*, p. 139.

No judgment of acquittal can be recorded unless a charge has been drawn up.—*Reg.* v. *Japit Ahir*, 22 W. R. Cr. 25.

While an order of acquittal is subsisting, it is not competent to any Court to order a re-trial.—*In re Joja Pashan*, 3 C. L. R. 131. See *Reg.* v. *Venku Narsa*, 9 Bom. H. C. R. 170.

If a prisoner in convicted, the Magistrate is bound to pass some sentence, however slight. The power of remitting sentences is reposed solely in the Government, and the Magistrate acts wholly without authority in warning and discharging a prisoner after he has been convicted.—3 W. R. C. L. 15.

In the case of a conviction of house-breaking by night in order to commit theft, it was held that there may be either one sentence for both offences not exceeding that which may be given by the law for the graver offence, or separate sentences for each offence, provided that in the aggregate the punishment awarded does not exceed that which may be given for the graver offence.—*Reg.* v. *Tukaya bin Tumana*, I. L. R. 1 Bom. 214. See *Reg.* v. *Golam Abas*, 12 Bom. H. C. R. 147. But see the case of *Nougan*, 7 Mad. H. C. R. 375, and *Queen* v. *Mungroo*, 6 N. W. P. H. C. R. 293, and the more recent cases cited in the notes to s. 235, *supra*.

As to the sentences which may be passed by Courts of various classes, see ss. 32 to 35.

An order dismissing a complaint in a warrant-case under this section amounts to an acquittal.—*In the matter of Jadubar Mookerjee*, 5 C. L. R. 359.

Court Fees.—Where a complainant is required to pay fees or expenses for summoning witnesses under this section and fails to do so, the Magistrate must deal with the case on the evidence before him, and is not justified in dismissing the complaint under s. 247, *supra*.—*In re Kolapulu* v. *Muniappa*, I. L. R. 5 Mad. 169.

In non-cognizable cases, applications or petitions containing a complaint or charge of any offence are chargeable with a fee of 8 annas.—*Court Fees Act, VII of* 1870, *Sched. II-4 (b)*. Under s. 18 of the Act, where the application is made verbally, and the examination of the complainant is reduced to writing, a like fee must be paid. Section 31 provides that, on conviction of the accused person, the Court shall, in addition to the penalty imposed upon him, order him to repay to

the complainant the fee paid on the petition or application, or on the examination of the complaint, &c., and also the fees paid by complainant for serving processes. Fees so ordered to be repaid are to be recovered as if they were fines.

Absence of complainant.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

As to what offences may be lawfully compounded, see s. 345, *infra*.

A Magistrate is not competent to pass an order of dismissal or discharge in consequence of the absence of the complainant in warrant-cases not coming within this section, except in cases coming within the last clause of s. 253, *supra*.—*Govinda Dass* v. *Dulail Dass*, I. L. R. 10 Cal. 67 : 13 C. L. R. 405.

A case having been transferred from the file of one Magistrate to that of another was, on the day fixed, called on for hearing, but the complainant not appearing, the case was dismissed under this section. It appeared that the complainant and his witnesses, though not in attendance in the Magistrate's Court, were present in another Court in the same Court-house, the complainant being under the impression that his case had been transferred to the Magistrate of that Court. PRINSEP and TOTTENHAM, JJ., treated the case as if the complainant had been present in Court, holding that, under the circumstances, the provisions of the section had been improperly applied.—*In re Romanath Bal* v. *Beheri Bag Bagdi*, 13 C. L. R. 303.

Where a complainant is required to pay fees or expenses for summoning witnesses under s. 244 and fails to do so, the Magistrate must deal with the case on the evidence before him, and is not justified in dismissing the complaint under this section.—*In re Korapulu* v. *Monappa*, I. L. R. 5 Mad. 160. As to fees and processes in non-cognizable cases, see note to s. 244, *supra*.

A Magistrate, it was held, was not bound, before acquitting a person under this section, to wait till the Court is about to close for the day to give an absentee complainant an opportunity of appearing.—*Kuttiyali* v. *Pari Makri*, I. L. R. 7 Mad. 356. See *Ramaswami Ayyangu* v. *Narasimhulu*, I. L. R. 7 Mad. 213. See *Emp.* v. *Nowab Jan*, I. L. R. 10 Cal. 551.

As to procedure in absence of complainant in summons-cases, see s. 247, *supra*.

CHAPTER XXII.

OF SUMMARY TRIALS.

Presidency Magistrates.—This Chapter does not apply to Presidency Magistrates. The procedure of such Magistrates as to the taking of evidence is regulated by s. 362, *post*, which provides that in every case in which a Presidency Magistrate imposes a fine exceeding Rs. 200, or imprisonment for a term exceeding six months, he shall either take the evidence in his own hand, or cause it to be taken down in writing from his dictation in open Court.

Power to try summarily.

260. Notwithstanding anything contained in this Code,

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government

may try in a summary way all or any of the following offences :—

(*a*) Offences not punishable with death, transportation or imprisonment for a term exceeding six months ;

Offences under s. 2 of Act XIII of 1859 are triable summarily.—*Emp.* v. *Indarjit*, I. L. R. 11 All. 202.

(*b*) Offences relating to weights and measures, under sections 264, 265, and 266 of the Indian Penal Code ;

Section 264 of the Penal Code relates to the fraudulent use of a false instrument for weighing ; s. 265, to the fraudulent use of false weights or measures ; and s. 266, to being in possession of false weights or measures.

(*c*) Hurt, under section 323 of the same Code ;

Section 323 relates to voluntarily causing hurt.

(*d*) Theft, under sections 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

Section 379 relates to theft ; s. 380, to theft in a dwelling-house ; s. 381, to theft by a clerk or servant of property in possession of his master.

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees ;

Section 411 relates to dishonestly receiving stolen property.

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees ;

Section 414 relates to voluntarily assisting in the concealment of stolen property.

(*g*) Mischief, under section 427 of the same Code ;

Section 427 relates to committing mischief and thereby causing damage to the amount of Rs. 50. See *Somai Sardar* v. *Bukhtar Sardar*, 25 W. R. Cr. 46 : *In re Gumiroollah Sarkar*, I. L. R. 10 Cal., 408.

(*h*) House-trespass, under section 448 of the same Code ;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ;

(*j*) Abetment of any of the foregoing offences ;

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence :

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

An offender under s. 49 of Act XXI of 1836 (the Bengal Abkaree Act) can be tried summarily, the confiscation provided by s. 49 of that Act being merely a consequence of the conviction and not forming part of the punishment for the offence.—*Emp.* v. *Baidunath Das*, I. L. R. 3 Cal. 360 : (S. C.) 1 C. L. R. 442, overruling *In re Khelter Mohun Chowrunghee*, 22 W. R. Cr. 43, and *Re Jodoo Nath Shaha*, 23 W. R. Cr. 23.

The formalities required by this Chapter must be most strictly observed (*Queen* v. *Johris Singh*, 22 W. R. Cr. 28), and it must clearly appear on the face of the conviction that the case was dealt with as one of those which come under the purview of the section ; for instance, if the case be one of theft, it should appear what the value of the property alleged to be stolen really was.—*Queen* v. *Ahsen Parrida*, 20 W. R. C. 17. In the case above referred to of *Queen* v. *Johris Singh*, JACKSON, J., said : "In a trial by a Magistrate under a procedure which is most justly called summary, the Legislature has provided a minimum of protection for the person affected by the order ; and it appears to us absolutely necessary that officers who act under the 18th Chapter of the Code (the corresponding Chapter in Act X of 1872) should most strictly observe the scanty formalities which the Chapter provides. If they do not do so, it would be absolutely impossible for this Court, as a Court of Revision, or for any other authority, to exercise the smallest control over proceedings which may form the subject of complaint."

District Magistrates should satisfy themselves from time to time that the law regarding summary trials is properly observed, and especially that Magistrates do not exceed their jurisdiction—a duty which may be most conveniently performed by an occasional and not infrequent examination of the registers of summary trials.—*Cal. H. C. C. O., No.* 1, *dated* 11*th January* 1881 ; *Wilkins*, p. 113.

A charge of mischief, even if combined with one of theft, is triable summarily under this section.—*Queen* v. *Ramaotar Panre*, 25 W. R. Cr. 5.

The question whether a case is to be tried summarily depends on the complaint ; the evidence may fail to show that the property is worth more than Rs. 50 ; but it is the complaint which must determine the mode of procedure.—*Ram Chunder Chatterjee* v. *KunyeLaha*, 25 W. R. C. 19. Thus a Magistrate has no jurisdiction to try a case summarily when the complaint is of an offence which he could not try even, if the evidence shows that the offence committed was one which could be dealt with summarily.—*Dwarkanath Mozoomdar* v. *Nalu Das*, 21 W. R. Cr. 89.

Where the accused was charged with the theft of a box containing Rs. 70 in cash and of the box worth 8 annas 6 pie, the Magistrate considered the box to be of no value and struck out the 8 annas 6 pie, and thereupon tried the case summarily. It was held, that the Magistrate was not at liberty upon his own authority and without taking evidence to throw the box entirely out of consideration, as upon that depended his jurisdiction to dispose of the case summarily. Such evidence should have been taken precisely in the same way as evidence upon the merits of the case, and as it was not so taken, it was held that the Magistrate had no jurisdiction.—*Queen* v. *Buzloh Ali*, 22 W. R. Cr. 65.

The powers conferred upon Magistrates under this Chapter were not intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of the Chapter, but when a charge of a serious offence, one which the Magistrate is not competent to inquire into summarily, has been regularly preferred, it is the duty of the Magistrate to apply the procedure prescribed for such cases, and either to convict or acquit or commit for

trial the person implicated. The procedure under this Chapter is to be followed when a charge brought against the accused is plainly and directly one of those specified in this section.—*Chunder Shekhur Thacoor* v. *Nilaloo*, 22 W. R. Cr. 29; and see *Khutter Mohun Chowrunghee*, *ib.* 43; *Hurun Shaikh* v. *Ramdhun Biswas*, 24 W. R. Cr. 21; *Emarat Sheikh* v. *Mohammati Sheikh*, 24 W. R. Cr. 48.

Splitting Offences.—No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction over the minor parts of the offence.—*In re Chunder Seekur Sookul* v. *Dhurrum Nauth Tewari*, 1. C. L. R. 434; *Ramanand Mahton* v. *Koylash Mahton*, I. L. R. 11 Cal. 236; *Emp.* v. *Abdool Karim*, I. L. R. 4 Cal. 18; (S. C.) *In re Abdool Kadir*, 3 C. L. R. 44. Such proceedings are void under s. 530, *infra*. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really merely exaggeration and not to be believed.—*Ib.*

So where a complaint comprises charges not triable summarily, but the Magistrate ascertains that the facts which are alleged to have taken place disclose only an offence or offences triable summarily he may dispose of the case summarily.—*Golap Pandey* v. *Boddam*, I. L. R. 16 Cal. 715. See *Reg.* v. *Aboo Sheikh*, 23 W. R. Cr. 19: *In re Mewa*, 6 N. W. 254.

If a Magistrate, not being empowered in that behalf, tries an offender summarily, his proceedings are void.—*S.* 530, *post*.

Evidence.—Section 355, *post*, provides that in summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned in s. 260, cls. (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds. Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate is prevented from making a memorandum as above required he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

In cases where no appeal lies, the Magistrate need not record evidence (s. 263, *post*); but in cases where there is an appeal, he must record a judgment embodying the substance of the evidence. – *S.* 264, *post*.

The Local Government may direct any two or more Magistrates in any places outside the Presidency-towns to sit together as a Bench, and may, by order, invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second, or third class, and direct it to exercise such powers in such cases or such classes of cases only, and within such local limits, as the Local Government thinks fit. Except as otherwise provided by any order under the section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall for the purposes of this Code, be deemed to be a Magistrate of such class.—*S.* 15, *supra*.

The following notification, dated the 6th May 1873, was published by the Government of Bengal, respecting Benches of Magistrates in the Districts of Dinagepore, Maldah, Rungpore, Chittagong, Tipperah, Dacca, Backergunge, Mymensing, Shahabad, Sarun, Tirhoot, and Kamroop:—

1. Under the direction of the Magistrate of the District, any two or more of the Honorary Magistrates in any district may, in that district, sit as a Bench in company with the Magistrate of the District, or the Subdivisional Magistrate, or any salaried Magistrate, subordinate to the Magistrate, of the District, exercising not less than second class powers; and any Bench so constituted is vested with first class powers in respect of offences cognizable by Magistrates of the first class, and with powers of summary trial under s. 222 [s. 260] of the Criminal Procedure Code.

2. Under the special order of the Magistrate of the District, any two Magistrates, honorary or salaried, of whom one is vested with not less than second class powers, may form a Bench with first class powers for the trial of any particular case or class of cases specially referred to them by the Magistrate of the District. Such Bench may also exercise summary powers under s. 222 [s. 260], unless the order of reference is for trial in regular form.

3. Under the direction of the District Magistrate, any one of the Honorary Magistrates of a district may sit with any salaried subordinate Magistrate to form a Bench, and the Bench shall, when so constituted, exercise second class powers in respect of offences cognizable by Magistrates of that class and powers of summary trial under s. 225 [s. 261] of the Criminal Procedure Code, unless any member of the Bench has first class powers, in which case the Bench may also exercise those powers. If the Magistrate of the first class has summary powers under s. 222, the Bench may exercise those powers.

4. Subject to the general orders of the Magistrate of the District, any two or more Honorary Magistrates may, in their respective towns or municipalities, sit together as a Bench for the disposal of offences under Municipal or Town Acts and the conservancy clauses of any Police Act, without the assistance of any salaried Magistrate, and such Bench shall exercise third class powers and powers of summary trial under s. 225 [s. 261] in respect of all cases.—*Calcutta Gazette*, 1873, p. 662.

The Presidency Magistrates are directed, by the Lieutenant-Governor of Bengal, to submit returns showing the working of their Courts to be sent to the Commissioner of Police. See Resolution, 31st December 1872, *Calcutta Gazette*, 1873, p. 29.

Under s. 50 of Act X of 1872, Benches of Magistrates in the towns of Ootacamund and Conoor in the Nilgiri District, were invested with the powers of a Magistrate of the first class; and under s. 224, the same Benches were empowered to try summarily all the offences mentioned in s. 222 [s. 260 of the present Code] of Act X of 1872.—*Madras Gazette*, 1875, p. 1204.

By a notification, dated the 1st May 1877, under the provisions of ss. 42 and 223 of Act X of 1872, the Governor of Madras was pleased to confer upon all Subordinate Judges in the Presidency the powers of a Magistrate of the first class in respect to offences generally, together with the power to try summarily all the offences mentioned in s. 222 [s. 260] of the Code and to invest all District Moonsiffs under s. 42 with the powers of a Magistrate of the first class in regard to offences generally.—*Madras Gazette*, 1877, p. 287.

By a notification in the *Bombay Gazette*, 1873, p. 16, dated 1st January 1873, that portion of the notification of the 14th December 1872 which invested all persons therein appointed to be Magistrates of the first class with the power to try summarily all the offences mentioned in s. 222 of Act X of 1872 (s. 260) was cancelled, and it was notified that such power would in future only be conferred on individual Magistrates who might be specially recommended by a Magistrate of a district for the grant of this particular power. By the same notification, Honorary Magistrates throughout the Presidency were excepted from the delegation of powers mentioned in the notification of the 14th December 1872. And it was notified that the additional power to be conferred thereafter on each Honorary Magistrate would be determined on the receipt of a report from the Magistrate of the District in which such Honorary Magistrate might reside.

In Bengal, any Bench of two or more Honorary Magistrates sitting with a salaried Magistrate exercising not less than second class powers is vested with first class powers.—*Calcutta Gazette*, 1873, pp. 17 and 982. Accordingly, there is no appeal from a sentence passed under this section by such a Court.—*S.* 414, *post*: *In re Havildar Roy*, I. L. R. 9 Cal. 96.

As to appeal, see ss. 414 and 415, *post*.

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447 ;

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month ;

(*c*) Abetment of any of the foregoing offences ;

(*d*) An attempt to commit any of the foregoing offences, when such attempt is an offence.

Section 277 of the Penal Code refers to fouling the water of a public spring or reservoir ; s. 278, to making the atmosphere noxious to public health ; s. 279, to rash driving or riding on a public way ; s. 285, to negligent conduct with respect to any fire or combustible matter ; s. 286, to negligent conduct with respect to any explosive substance ; s. 289, to negligence with respect to any animal ; s. 290, to public nuisances ; s. 292, to sales, &c., of obscene books ; s. 293, to the possession of obscene books for sale or exhibition ; s. 294, to singing obscene songs ; s. 323, to voluntarily causing hurt ; s. 334, to voluntarily causing hurt on provocation ; s. 336, to rash and negligent acts ; s. 341, to wrongful restraint ; s. 352, to using criminal force otherwise than on grave provocation ; s. 426, to mischief ; s. 447, to criminal trespass.

A Bench of Magistrates, whether empowered under this or the preceding section, can only try the offences mentioned in the section.—*Reg.* v. *Bolhekí Pathak*, 21 W. R. Cr. 12. See *In re Havildar Roy*, I. L. R. 9 Cal. 96. If a Magistrate, not being empowered, tries an offender summarily, his proceedings are void.—*S.* 530, *post*.

In Madras it was held that offences under s. 48 of the Madras Police Act (XXIV of 1859) were within the cognizance of a Bench of Police Magistrates.—*Emp.* v. *Oolaganadan*, I. L. R. 13 Mad. 142.

Procedure for summons and warrant-cases applicable.

262. In trials under this Chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

This section applies only to substantive sentences of imprisonment.—*Emp.* v. *Asghur Ali*, I. L. R. 6 All. 61. In that case the accused was summarily tried by a Magistrate for embezzlement of opium, convicted and sentenced to pay a fine of Rs. 60, or in default to suffer four months' imprisonment in the Civil jail. The Sessions Judge referred the matter to the Allahabad High Court, on the ground that, in his opinion, having regard to ss. 33 and 262 of this Code, the Magistrate could not inflict more than three months' imprisonment in default of payment of the fine. TYRRELL, J., said : "In cases of simple imprisonment ordered as a process for the

enforcement of payment of fine, the general rules of ss. 32 or 33 are applicable, and the principle of s. 67 of the Indian Penal Code (read with Act VIII of 1882) is unaffected by Chap. XXII of Act X of 1882."

The provisions of s. 560, empowering the Magistrate to make an order for compensation in frivolous or vexatious cases are applicable in the case of summons-cases tried summarily under this section.—*Emp.* v. *Basava*, I. L. R. 11 Mad. 142.

It is not illegal to impose solitary confinement as part of the sentence in a case tried summarily. The effect of this section is only to limit the imprisonment to a term of three months. It does not interfere with a Court's powers under s. 73 of the Penal Code to order solitary confinement, or with the similar powers given by s. 32 (*a*) of this Code.—*Per* OLDFIELD, J., *Emp.* v. *Annu Khan*, I. L. R. 6 All. 83.

A sentence of whipping only may be passed in a case tried summarily under this Chapter.—See s. 414, *post*.

The procedure prescribed for the trial of summons-cases and for warrant-cases respectively is contained in Chaps. XX and XXI. As to the manner in which the evidence is to be taken or recorded, see ss. 263, 264, 355, *post*.

If a Magistrate, not being empowered on that behalf, tries an offender summarily, his proceedings are void.—*S.* 530, *post*.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of section 260, the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

Act X of 1872, s. 227. The clause of s. 227 providing that the Magistrate need not record his reasons for passing his judgment, which was inconsistent with cl. (*h*), has been ommitted. See *In re Dowlat Singh*, 6 C. L. R. 273.

As to when an appeal lies, see Chap. XXXI, *post*.

Where there is an appeal, the record cannot be made up in the manner described by this section (*In re Sher Mahomed*, 2 C. L. R. 511); and the Magistrate is bound to record a brief statement of his reasons for convicting an accused.—*In re Rohoinath Shaha*, I. L. R. 8 Cal. 195.

The record must be written by the Magistrate. He is not authorized to depute that duty to a clerk, nor to affix his signature to the record or judgment by a stamp.—*Subramanya* v. *Queen*, I. L. R. 6 Mad. 396. (See *Emp.* v. *Janki Prosad*, I. L. R. 8 All. 293.)

Under cl. (*h*), although a Magistrate is not required to record any evidence, he should, in recording his reasons for the conviction, so state them, that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction.—*In re Punjab Singh*, I. L. R. 6 Cal. 579: *Mehtab*, Punj. Rec., 1887, p. 10. In the former case the reasons were not so stated, and the High Court, on motion, set the conviction aside.

The final order or judgment in warrant-cases tried summarily, when a conviction is not made, should invariably show whether the accused person has been discharged or acquitted, the test being whether, after hearing the evidence for the prosecution, the Court has called upon the prisoner to plead to a definite charge or not.—*Smyth*, p. 102.

See ss. 355, 356, and 364, *post*, as to cases in which the Magistrate must make a memorandum of the evidence. The provisions of s. 364 as to the recording of the examination of accused persons are by that section declared not to apply to the examination of an accused under this section. In examining an accused person, however, in a summary trial, the Magistrate must be guided by s. 342, *post*.

A Magistrate, trying an offence summarily and passing a sentence from which an appeal lies, should not make the record required by s. 264 of the Code of Criminal Procedure as an entry in the register prescribed by s. 263; and then, on the Appellate Court calling for the record of the trial, cut out and send up the portion of the register containing this entry. The practice o

mutilating official registers is open to the gravest objection, and is strictly prohibited; there is no warrant for it in the law. Section 263 of the Code of Criminal Procedure directs that a register shall be kept for a certain purpose, namely, for the purpose of entering such particulars as are specified in the section, *in cases where no appeal lies*. The provisions of this section do not apply to any other cases.—*C. O., No.* 3, *8th July* 1876; *Wilkins*, p. 113.

District Magistrates should satisfy themselves from time to time that the law regarding summary trials is properly observed, and specially that Magistrates do not exceed their jurisdiction—a duty which may most conveniently be performed by an occasional and not infrequent examination of the register of summary trials.—*C. O., No.* 1, *11th January* 1881; *Wilkins*, p. 113.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Record in appealable cases.

Such judgment shall be the only record in cases coming within this section.

A Magistrate is not bound to record the substance of every separate deposition, but to state generally what is the substance of the witnesses' evidence.—*Kristodhone Dutt* v. *The Chairman of the Municipal Commissioners*, 25 W. R. Cr. 6.

In the case of *Reg.* v. *Kheruj Mullah*, 11 B. L. R. 33; 20 W. R. Cr. 13, it was held that, if, on appeal from a summary trial under this Chapter, the evidence before the Judge is not sufficient to reasonably satisfy him that the prisoner has been rightly convicted, he ought to acquit him.

In the more recent case of *Emp.* v. *Koran Singh*, I. L. R. 1 All. 690, the Court of Session quashed a conviction, on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate's judgment. It was held that the Court of Session should not have quashed the conviction merely by reason of such defect; but, if it found it impossible to dispose of the appeal because of such defect, it should have required the Magistrate to repair the same by recording a judgment in which the substance of the evidence should be fully embodied, and, if necessary, re-examine the witnesses for that purpose, or to have ordered a re-trial with that view.

As to whether an appeal will lie, see Chap. XXXI and particularly ss. 407, 414.

An appeal lies under s. 407 from a conviction by a Bench of Magistrates invested with second or third class powers.—*Emp.* v. *Narayanasami*, I. L. R. 9 Mad. 30. See note to s. 414, *post*.

The judgment required to be drawn up in *appealable cases* under s. 264 is to contain the particulars mentioned in s. 263 and something more, namely, the substance of the evidence on which the conviction was had. But it is not to be entered in the *register of non-appealable cases*, and is evidently intended to be in a separate form, so that, when necessary, it may be submitted to the Court of Appeal.—*C. O., No.* 3, *8th July* 1876; *Wilkins*, p. 113.

265. Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Language of record and judgment.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Bench may be authorised to employ clerk.

Inspection Registers of Summary Trials.—District Magistrates should satisfy themselves from time to time that the law regarding summary trials is properly observed, and especially that Magistrates do not exceed their jurisdiction—a duty which may most conveniently be performed by an occasional and not infrequent examination of the registers of summary trials.—*Cal. H. C. C. O. No.* 1 *of* 11*th January* 1881; *Wilkins*, p. 113.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

266. In this Chapter, except in section 276 [Act X of 1886, s. 8], 307, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief

"High Court" defined.

Court of the Punjab, the Court of the Recorder of Rangoon [Act XI of 1889, Schd. II] and such other Courts as the Governor-General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this Chapter.

Act X of 1875, s. 3.

See s. 4 (*l*), *ante*, as to the meaning of "High Court" when used elsewhere in this Code than in this Chapter.

Trials before High Court to be by jury.

267. All trials under this Chapter before a High Court shall be by jury; and, notwithstanding anything herein contained in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it must, except as provided in this section, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn. See s. 526, *post*.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Sessions shall be either by jury or with the aid of assessors.

If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid; and if an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.—*S. 536, post.*

Where, at the close of a trial, one of the assessors was discovered to be so deaf and blind as to be incapable of understanding the proceedings, the trial was held to be null and void.—*Mad. H. C. Pro., 22nd July* 1869; *Weir*, p. 3.

In cases tried with the aid of assessors the law contemplates the continuous attendance of at least one assessor throughout the trial (see s. 285, *post*). Accordingly, where in the course of a trial with three assessors, one assessor died, and later on another became too ill to attend, and finally the third assessor was obliged to retire during a portion of the address of the accused's pleader it was held that the trial was without jurisdiction.—*Emp.* v *Muhammad Khan*, I. L. R. 13 All. 337.

A trial by jury or with the aid of assessors does not begin till the charge has been read and the accused claims to be tried: See *Emp.* v. *Bastiano*, I. L. R. 15 Bom. 514.

Local Government may order trials before Court of Session to be by jury.

269. The Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may revoke or alter such order.

"When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury." [Act X of 1886, s. 9.]

Act X of 1872, s. 233, paras. 1 and 2.

The second paragraph of the original section has now been altered by Act X of 1886, s. 9. It was formerly as follows:

"When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for all such offences."

By a notification, dated 7th January 1862 (*Calcutta Gazette*, 1862, p. 87), it was ordered, that in the districts of the 24-Pergunnahs, Hooghly, Burdwan, Moorshedabad, Nuddea, Patna, and Dacca, the trial by any Court of Session of all the offences defined in Chaps. VIII, XI, XVI, and XVII of the Penal Code should be by jury.

Chapter VIII of the Penal Code relates to offences against the public tranquillity; Chap. XI to false evidence and offences against public justice; Chap. XVI, to offences affecting the human body and offences affecting life; and Chap. XVII, to offences against property.

On the 27th May 1862, it was notified (*Calcutta Gazette*, 1862, p. 2041) that, in the abovementioned districts, the trial by any Court of Session of the offences defined in Chap. XVIII of the Penal Code (offences relating to documents and to trade or property marks) should be by jury. And on the 13th October 1862 (*Calcutta Gazette*, 1862, p. 3416), it was ordered, that abetments of, and attempts to commit, any of the abovementioned offences in the districts specified should be tried by jury.

By a Notification, dated the 28th March 1862 (*Calcutta Gazette*, 1862, p. 1286), it was ordered that, in all the districts comprising the Assam Division, the trial of all offences by the Court of Session should be by jury.

In 1862 the following Notification, dated 20th October 1862, was published in Bengal :—

The 20th October 1862.—It is hereby notified for general information that, in the exercise of the powers conferred on him by s. 269 of the Code of Criminal Procedure, the Lieutenant-Governor is pleased to modify the orders contained in the notifications, dated the 7th January, the 27th May, and the 13th October 1862, published in the *Calcutta Gazettes* of the 8th January, the 28th May, and the 15th October 1862, respectively, under which offences defined in the following Chapters of the Indian Penal Code, *viz.* :—

CHAPTER VIII (offences against the public tranquillity),
" XI (false evidence and offences against public justice),
" XVI (offences affecting the human body),
" XVII (offences against property), and
" XVIII (offences relating to documents and to trade or property marks), and abetments of, and attempts to commit, such offences, are declared to be triable by jury in any Court of Sessions established in the districts of the 24-Pergunnahs, Hooghly, Burdwan, Murshidabad, Nadia, Patna, and Dacca; and hereby revokes so much of the aforesaid orders as apply to offences defined in the following chapters of the Indian Penal Code, *viz.* :—

CHAPTER VIII (offences against the public tranquillity),
" XVI (offences affecting the human body), with the exception of ss. 363 to 369 (kidnapping and abduction), 372 (selling a minor for purposes of prostitution, &c.) 373 (buying a minor for purposes of prostitution, &c., and 376 (rape), and
" XVIII (offences relating to documents and to trade or property marks).

These orders shall take effect from and after the 1st November 1862.

The Lieutenant-Governor is further pleased, in exercise of the powers conferred on him under s. 269 of the Code of Criminal Procedure, to direct that from and after the 1st November 1862, all offences defined in Chapter XX of the Indian Penal Code (offences relating to marriage), and abetments of, and attempts to commit, such offences, shall be triable by jury in any Court of Sessions established in the districts named above.

In Assam the following Notification was issued on the 15th October 1862 :—

" No. 4902J.—In exercise of the power conferred by s. 269 of the Code of Criminal Procedure (Act X of 1882) and in supersession of the Notifications dated the 28th March 1862 and the 17th September 1868, published at pages 1286 and 1604 of the *Calcutta Gazette* of the 5th April 1862 and 23rd September 1868, respectively, the Chief Commissioner directs that the system of trial by jury before the Court of Sessions in the districts of Goalpara, Kamrup, Darrang, Nowgong, Sibsagar, and Lakhimpur, which constitute the Judgeship of the Assam Valley Districts, shall, from the 1st January 1893, be limited to the following offences under the Penal Code :—

Sections 363—369, 372, and 373 (kidnapping and abduction).
Section 376 (rape).
Sections 379—382 (theft).
" 392—395, 397—399, and 401 (robbery and dacoity).
" 403 and 404 (criminal misappropriation).
" 411—414 receiving or possessing stolen property).
" 426—432, 434—436, and 440 (mischief).
" 448 and 450—462 (house trespass, &c).
" 493—498 (offences against marriage)."—*Assam Gazette*, 15th October 1862.

The publication of the Notification of the 20th October 1862, published in the *Calcutta Gazette* on the 29th October 1862, led to very considerable public agitation, and the matter of the Bengal Notification was eventually referred to a Commission which made its report on the 24th March with the following concluding recommendations :—

" We, the undersigned, accordingly report that, in our opinion, it is desirable that the classes of offences which, before the 20th October 1862, were triable by jury in the seven districts of Bengal abovementioned, should be triable by jury in those districts, and that the present classification should be amended accordingly.

" We further report that, in our opinion, it is desirable, for the purpose of preventing miscarriage of justice, to amend s. 307 of the Criminal Procedure Code by the substitution of the words ' and is clearly of opinion that it is,' for the words 'so completely that he considers it,' in the first paragraph of that section, and by the insertion in the third paragraph of the words ' shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge and of the dissentient jurors, if any, and '; and that it is also desirable for the same purpose to make such further amendments in the Criminal Procedure Code as may be necessary to carry out our recommendations hereinbefore set forth as regards special jurors and the area from which jurors should be selected.

(Signed) H. T. PRINSEP.
" G. H. P. EVANS.
" JOTINDRO MOHUN TAGORE.
" ROMESH CHUNDER MITTER.
" C. A. WILKINS."

Whereupon, on the 27th March 1893, the following Notification was published by the Government of Bengal withdrawing the Notification of the 20th October, 1862.

The 27th March 1893.—It is hereby notified for general information that, in the exercise of the powers conferred upon him by s. 269 of the Code of Criminal Procedure, 1882, the Lieutenant-Governor is pleased to order that on and after the 1st day of April 1893, the trials of all offences of the following classes shall be by Jury before any Court of Session established in the districts of the

24-Pergunnahs, Hooghly, Burdwan, Murshidabad, Nadia, Patna, and Dacca, that is to say—
Offences defined in the following Chapters of the Indian Penal Code, *viz.* :—
CHAPTER VIII (offences against the public tranquillity).
" XI (false evidence and offences against public justice).
" XVI (offences affecting the human body).
" XVII (offences against property), and
" XVIII (offences relating to documents and to trade or property marks), and abetments of, and attempts to commit, such offences.

The Notification dated the 20th October 1892, published in the *Calcutta Gazette* of the 26th October 1892, is hereby cancelled.

The Notification of the Assam Government of the 15th October 1892 has also been withdrawn.—*Assam Gazette, 20th May* 1893.

In the Bombay Presidency trial by jury was introduced in the Poona District in 1867;—(*Bombay Gazette*, Notification, 31st August 1867); it was extended to the districts of Ahmedabad, Belgaum, Thana and Surat, and to the city of Karachi, (*Bombay Gazette*, 1884, Part I, p. 708; *ibid*, 1885, 544; *ibid*, 290.) It thus obtains in six out of the twenty-three districts which constitute the Presidency. Offences are classified as triable by jury according to the degree of punishment attached to them. In Ahmedabad all offences punishable with death (and such offences only); in Belgaum, Thana, Surat, and Karachi all offences punishable with death, transportation for life or imprisonment for ten years, and in Poona all offences so punishable which fall within Chapters VIII (offences against public tranquillity), XI (false evidence and offences against public justice), XII (offences relating to coin and Government stamps), XVI (offences against the persons), XVII (offences against property), and XVIII (false documents and offences against property marks) of the Penal Code, are triable by jury before the Court of Session.—*Despatch to Secretary of State, Government of India, Home Department, Judicial, No.* 32 *of* 1892, 21*st December* 1892.

In the North-Western Provinces and Oudh the jury system is in force only in Allahabad, Benares and Lucknow (or in 3 out of 49 districts), where it was introduced in 1885.—*Gazette*, 13th December 1884, p. 698. The cases triable by jury are those relating to offences punishable under ss. 303 to 309, 372 and 373 (kidnapping and abduction), and 376 (rape) in Chapter XVI of the Penal Code (offences against the person), ss. 379 to 382 (theft), 397 to 399 and 401 (robbery and dacoity), 403 and 404 (criminal misappropriation), 411 to 414 (receiving or possessing stolen property), 426 to 432, 434 to 436 and 440 (mischief), 448 and 450 to 462 (house-breaking, burglary, &c.) in Chapter XVII (offences against property); all offences falling under Chapter XX (relating to marriage) and attempts to commit and abetments of those offences.—*Despatch to Secretary of State, No.* 32 *of* 21*st December* 1892.

The trial by the Court of Session at Poona of all offences for which, under Chapters VIII, XI, XII, XVI, XVII or XVIII of the Indian Penal Code, or under any of those chapters taken in connection with s. 75 of the Indian Penal Code, the punishment awardable is death, transportation for life, or transportation or imprisonment for a period extending to ten years or upwards, and also of all abetments of, or attempts to commit, any of the offences included in those chapters must be by jury in the Poona Districts. And any person who may be tried by a jury for any of the offences specified must be tried by the same jury for all offences with which he may be charged on the same trial.—*Bombay Gazette*, 1875, p. 798.

In Madras trial of the undermentioned offences in all Sessions Courts except those in the Agencies of Ganjam, Godavery and Vizagapatam must be by jury:—The offences described in ss. 378, 380, 382, 392, 391, 395, 397, 398, 399, 400, 402, 411, 412, 414, 451, 452, 453, 454, 455, 456, 457, 458, 459, and 461 of the Penal Code. Madras Notifications, 15th March, 13th May, 25th July, and 1st August 1862: 14th April 1863, and 11th February 1870; *Weir*, p. 76.—*Madras Gazette*, 20th March 1883.

Burmah.—The trial of all offences committed by European British subjects before the Courts of Session in Burma must be by jury.—*Burma Gazette*, 1877, Part II, p. 117.

The trial of all offences by the Court of the Recorder of Rangoon and by the Court of the Judge of the Town of Moulmein must be by jury.—*Burma Gazette*, 1875, Part II, p. 233, which must consist of five persons.—*Burma Gazette*, 1876, Part II, p. 17.

Now by Reg. V of 1892.—"Subject to such rules as the Local Government may from time to time make in this behalf, a trial before a Court of Session may be without jury or aid of assessors."

Trial by jury ceases in a district when the district ceases to belong to a division to which trial by jury has been extended.—*Reg.* v. *Khoodeeram*, 8 W. R. Cr. 39.

If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid; if an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.—*Post*, s. 536.

Where a jury, on a trial before a Court of Session, by a majority returned a verdict of "not guilty" on all the charges, some of which were triable by assessors, it was held, that the Judge was bound to treat the trial as valid, and to proceed to record a final order in accordance with s 263 of Act X of 1872 (s. 300 of this Code).—*In re Bhootnath Dey, Appellant*, 4 C. L. R. 405. So, in the case of *Emp.* v. *Lakshmana*, I. L. R. 9 Mad. 42, the Judge of the Sessions Court treated a jury who returned a verdict of guilty as assessors and acquitted the accused, but it was held that the irregular procedure of the Judge could not deprive the verdict of its legal effect.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

This section has been held to be merely directory.—*Ismail*, Punj. Rec., 1887, p. 77.

For definition of "Public Prosecutor," see s. 4 (*m*), *ante*.

The Public Prosecutor may avail himself of the services of counsel retained by a private individual (*In re Narayan M. Pendshe*, 11 Bom. H. C. R. 102), and it is not necessary that the counsel should be specially empowered by the Magistrate of the District for that purpose.—*In re Gungadhur Sircar*, 23 W. R. 14.

In the case of *Queen* v. *Ramchunder Sircar*, 13 W. R. Cr. 18, KEMP and JACKSON, JJ., expressed an opinion that it was highly objectionable for prosecutions in Sessions Courts to be conducted by officers of the Police. Under s. 495 *post*, any person other than certain officers of Police may be granted permission to conduct a prosecution. See s. 495 and the notes thereto.

The following rule is in force in Burma, when cases are committed by Magistrates other than the Magistrate of the District for trial by the Court of Session:—The committing Magistrate shall always notify the same to the Magistrate of the District, so that the latter may, under s. 235 of the Code of Criminal Procedure, empower some officer, where the services of the Government Advocate are not available, to conduct the prosecution before the Court of Session.—*Burma Gazette*, 1877, Part III, p. 133.

In Madras the authority of Government should be obtained by District Magistrates before employing for the prosecution professional agency other than that of the Government Pleader.—*Notification* (*Madras*), *11th August* 1876; *Weir*, p. 82. The District Magistrate is not bound to employ the Government Pleader in conducting prosecutions.—*1st September* 1866, *ib.* Where a higher fee than that which a District Magistrate is authorized to disburse for a prosecution is considered necessary, application should be made to the Government.—*Ibid.*

See Chap. XXXVIII, *post*.

B.—Commencement of Proceedings.

Commencement of trial.

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

When arraigning an accused, and before receiving his plea, the Court should be careful to insure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly the nature of the charge to which he is called upon to plead.—*Emp.* v. *Vaimbilse*, I. L. R. 5 Cal. 826: *Aiyavu* v. *Emp.*, I. L. R. 9 Mad. 61.

Under s. 494, any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal (*a*) if it is made before a charge has been framed, the accused shall be discharged; (*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

A prisoner was charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304. He stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. It was held that the conviction was bad.—*In re Gopal Dhanuk*, I. L. R. 7 Cal. 90: (S. C.) 8 C. L. R. 471.

Where a prisoner, on the charge being read and explained to him, pleads guilty, the Judge must record the plea, and not merely record a narrative of what occurred and of the statements made by the prisoner.—*In re Gopal Dhanuk*, 8 C. L. R. 471: (S. C.) I. L. R. 7 Cal. 96. An admission which does not admit all the elements of the charge is not a plea of guilty to the charge.—*Ibid*: *Queen* v. *Sonaoollah*, 25 W. R. Cr. 23: *Nalai Luskar* v. *Emp.*, I. L. R. 11 Cal. 410.

The prisoner should plead by his own mouth, and not through his counsel or pleader.—*Reg.* v. *Roopa Gowalla*, 15 W. R. Cr. 42.

The language in which a plea is conveyed to the Court by the interpreter is the language in which it should be recorded.—*Emp.* v. *Vaimbilse*, I. L. R. 5 Cal. 826.

If a prisoner pleads in effect not guilty, he must be tried, and the Sessions Judge is not justified in convicting him solely upon a confession made before the committing Magistrate.—*Queen* v. *Hursookh*, 2 All. 479.

If a prisoner pleads not guilty, and the Public Prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty.—*Pro.*, *9th March* 1869: 4 *Mad. H. C. Rul. xxxix.*

A former trial set aside on the ground of want of jurisdiction and illegality is not a bar to a second trial.—*Reg.* v. *Muthooraperaad Pandey*, 2 W. R. Cr. 10.

When a prisoner admitted before the Court of Sessions that he had killed his wife and no assessors were appointed, but the prisoner said that, at the time he committed the offence, he was out of his mind, whereupon the Judge took evidence on this point, and, coming to the conclusion that the prisoner's mind was not then affected, convicted him, it was held that the prisoner's plea was in

effect one of not guilty, and that the trial should not have proceeded without assessors.—*Queen* v. *Cheit Ram*, 6 All. 110.

See further notes to s. 255, *ante*.

As to modification of procedure where there is a previous conviction, see s. 310, *post*.

Refusal to plead or claim to be tried.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

The trial by jury or with the aid of assessors does not actually begin till the charge has been read and the accused claims to be tried.—*Emp.* v. *Bastiano*, I. L. R. 15 Bom. 514.

If a prisoner pleads in effect not guilty, he must be tried, and the Sessions Judge is not justified in convicting him solely upon a confession made before the committing Magistrate.—*Queen* v. *Hursook*, 2 All. 479.

If a prisoner pleads not guilty, and the Public Prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty.—*Pro.*, *9th March* 1869: 4 *Mad. H. C. Rul. xxxix.*

Any person summoned as an assessor to a Court of Session may apply for the payment of expenses incurred by him on account of attendance, and the Magistrate of the District shall, if the charges appear reasonable, order payment to be made; provided that the amount paid shall not exceed three rupees per diem.

In calculating the time occupied in attendance, if the journey be made otherwise than by rail, a distance of twelve miles shall be held to represent one day.—*Smyth*, p. 134.

There should ordinarily be a change of assessors after the trial of every third or fourth case.—*Mad. H. C. Pro.*, 11*th February* 1863; *Weir*, p. 3.

Entry on unsustainable charge.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

An entry made under this section is not an acquittal for the purposes of s. 403, *post*. Under s. 494, *post*, the Public Prosecutor also may, with the permission of the Court, withdraw from the prosecution of any person. Applications under this section should be disposed of by the High Court in the exercise of its Ordinary Original Criminal Jurisdiction.—*In re Charoo Chunder Mullick*, I. L. R. 9 Cal. 397.

C.—Choosing a Jury.

Number of jury.

274. In trials before the High Court, the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

For rules as to choosing jurors in Calcutta, see *Belchambers' Rules and Orders*, pp. 256–267.

Bengal.—In trials by jury before a Court of Session, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, it was notified that the jury should consist of five persons in the districts named in the subjoined list A, and of three persons in the districts named in list B:—

List A.

Burdwan.	24-Pergunnahs.	Shahabad.	Monghyr.
Midnapore.	Moorshedabad.	Tirhoot.	Bhaugulpore.
Hooghly.	Dacca.	Sarun and Chumparun.	Cuttack.
Howrah.	Patna.		

List B.

Bankurah.	Pubna.	Noakholly.	Singbhoom.
Beerbhoom.	Darjeeling.	Tipperah.	Manbhoom.
Nuddea.	Julpigoree.	Gya.	Goalparah.
Jessore.	Furreedpore.	Purneah.	Kamroop.
Dinagepore.	Backergunge.	Sonthal Pergunnahs.	Durrung.
Maldah.	Mymensingh.	Pooree.	Nowgong.
Rajshahye.	Sylhet.	Balasore.	Seebsaugur.
Rungpore.	Cachar.	Hazareebagh.	Lucknipore.
Bograh.	Chittagong.	Lohardugga.	

Calcutta Gazette, 1873, p. 152. See note to s. 276, *post*.

But by a subsequent notification, it was ordered, that, in trials before the Court of Session in which the accused person is not an European or American, the jury should consist of five persons in all districts in which the system of trial by jury had been, or might thereafter be, extended.—*Calcutta Gazette*, 1873, p. 741.

In the N.-W. Provinces, juries, in trials by jury before the Court of Session, must consist of seven persons.—*N. W. Provinces Gazette*, 1873, p. 1042.

The jury in trials before the Court of Session in the districts of Lahore, Delhi, Rawal Pindi, and Peshawur must consist of nine persons: in the districts of Amballa, Multan, and Sialkot, of five persons; and in all other districts of the Punjab, of three persons.—*Punjab Gazette*, 1873, p. 76.

For rules as to the payment of jurors and assessors in the Punjab, see *Punjab Gazette*, 1877, Part III, p. 188.

In all trials by jury before the Poona Court of Session, of offences under Chaps. VIII, IX, XII, XVI, XVII, XVIII of the Indian Penal Code, the jury must consist of five persons.—*Bombay Gazette*, 1873, p. 129. But in Bombay five has been fixed as the number for the jury in trials before the Courts of Session in the Bombay Presidency, in which an European, not being an European British subject or an American, is the accused person or one of the accused persons.—*Ibid.*

In the Madras Presidency, the jury shall consist of five jurors.—*Madras Notification*, 21*st December* 1872 *and* 4*th January* 1873; *Weir*, p. 76.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jury for trial of persons not Europeans or Americans before Court of Session.

As to the trial of European British subjects, see s. 451, *infra*.

A Judge is not bound to try a native Christian with the aid of a Christian jury.—*In re Bharut Chunder Christian*, 1 W. R. Cr. 2.

276. The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct:

Jurors to be chosen by lot.

Proviso. Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Existing practice maintained.

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Persons not summoned when eligible.

Trials before special jurors. *thirdly*, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

This section contemplates that the names of the jury to be 'chosen by lot' shall all be drawn out of one box containing the names of all persons summoned to act as jurors.—*Reg.* v. *Vithaldas Pranjivandas*, I. L. R. 1 Bom. 402.

For the practice in Bombay, see *Reg.* v. *Vithaldas Pranjivandas*, I. L. R. 1 Bom. 402: and in Calcutta, see *Belchambers's Rules and Orders*, pp. 256–257.

Irregularity in the selection of the jurors is not, unless the accused has been prejudiced, ground for setting aside a verdict. See *In re Jhubboo Mahton*, I. L. R. 8 Cal. 739, and s. 537, *post*.

As to the meaning of "High Court" in the section, see s. 266, *ante*, as amended by Act X of 1880, s. 8.

The following rules, made under the authority conferred by s. 276, Act X of 1882 (Code of Criminal Procedure), are laid down for the guidance of the Subordinate Criminal Courts :—

Courts of Session.

I.—In order to nominate a jury for the trial of any prisoner or other person to be tried by jury, the Sessions Judge shall cause to be put together in one box cards or pieces of paper containing the names of all the persons summoned to attend, except such of the said persons as shall have been excused by the Sessions Judge from serving on that day in consequence of their having served as jurors on the previous day, or for any other cause. Such cards or pieces of paper shall be, as nearly as may be, of equal size, and each shall bear the name of one person summoned to attend. The Sessions Judge shall then, in open Court, draw, or cause to be drawn, out of the said box, one after another, as many of the said cards or pieces of paper as may represent the number of jurors required to try the case,[1] and if any of the jurors whose names shall be so drawn shall not appear, or if any be objected to, and the objection be allowed, then such further number shall be drawn as may be necessary to complete the number of jurors required for the case.

II.—In cases in which not less than one-half of the jury must be either Europeans or Americans (s. 460, C. C. P., and s. 451, C. C. P., read with s. 7, Act III of 1884) or both Europeans and Americans (s. 451, C. C. P. read with s. 7, Act III, 1884), the jurors shall be chosen as follows :—

First.—Not less than one-half of such jury shall be chosen by lot, in the manner prescribed by Rule I, from a box containing the names of only Europeans or Americans, or Europeans and Americans, until the necessary majority is complete.

Second.—To the names of jurors not so chosen shall then be added the names of all the other jurors summoned to attend, and the number necessary to complete the jury shall then be chosen by lot in the manner prescribed by Rule I.

III.—In cases in which not less than one-half of the jury must be neither Europeans nor Americans (s. 275, C. C. P.), the jurors shall be chosen as follows :—

First.—Not less than one-half of such jury shall be chosen by lot, in the manner prescribed by Rule I, from a box containing the names only of such persons as are neither Europeans nor Americans, until the necessary majority is complete.

Second.—To the names of jurors not so chosen shall then be added the names of all the other jurors summoned to attend, and the number necessary to complete the jury shall be chosen by lot in the manner prescribed by Rule I.

IV.—When the jurors have been finally selected, their names shall be entered on the fly-leaf prescribed for records of Sessions trials (p. 220, Cr. R. and O.), the "foreman" (s. 280, C. C. P.) being specially designated as such.

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[1] The number of jurors has been fixed as follows (section 274, Cr. P. C.) :—

(1) When accused is a European (not a European British subject) or an American, the jury shall consist :—

(*a*) of five persons in the following districts, *viz.* :—

Burdwan.	24-Pergunnahs.	Shahabad.	Bhaugulpore.
Midnapore.	Moorshedabad.	Tirhoot.	Cuttack.
Hooghly.	Dacca.	Sarun and Champarun.	
Howrah.	Patna.	Monghyr.	

(*b*) of three persons in the following districts, *viz.* :—

Bankura.	Pubna.	Nowkholly.	Singbhoom.
Beerbhoom.	Darjeeling.	Tipperah.	Manbhoom.
Nuddea.	Julpigoree.	Gya.	Goalparah.
Jessore.	Furreedpore.	Purneah.	Kamroop.
Dinagepore.	Backergunge.	Sonthal Pergunnahs.	Durrung.
Maldah.	Mymensingh.	Pooree.	Nowgong.
Rajeshahye.	Sylhet.	Balasore.	Seebsaugur.
Rungpore.	Cachar.	Hazareebagh.	Luckimpore.
Bogra.	Chittagong.	Lohardugga.	

(*Notification, Government of Bengal, 4th January* 1873, "*Calcutta Gazette*," *22nd, ib.*, Part I, page 152.)

(2) When accused is not a European or American, the jury shall consist of five persons in all the districts to which the system of trial by jury has been, or may hereafter be, extended.

(*Notification, Government of Bengal, 4th June* 1873, "*Calcutta Gazette*," *11th, ib.*, Part I, page 741.)

(3) When accused is a European British subject, the jury shall consist :—

(*c*) of five persons in the districts named in the subjoined list A, and of three persons in the districts named in list B :—

List A.

Bhaugulpore.	Durbhunga.	Lohardugga.	Nuddea.
Burdwan.	Hazareebagh.	Midnapore.	Patna.
Chittagong.	Hooghly.	Monghyr.	Purneah.
Chumparun.	Howrah.	Moorshedabad.	Sarun.
Dacca.	Jessore.	Mozufferpore.	24-Pergunnahs.

List B.

Backergunge.	Darjeeling.	Maldah.	Rajshahye.
Balasore.	Dinagepore.	Manbhoom.	Rungpore.
Bankura.	Furreedpore.	Mymensingh.	Shahabad.
Beerbhoom.	Gya.	Noakholly.	Singhboom.
Bogra.	Julpigoree.	Pooree.	Sonthal Pergunnahs.
Cuttack.	Khoolna.	Pubna.	Tipperah.

(*Notification, Government of Bengal, 17th June* 1885.)

And of five persons in the following districts in Assam, in trials before the Court of Session, as well as in trials before a District Magistrate under the provisions of Act III of 1884 :—

Goalparah.	Sylhet.	Luckimpur (excluding the Dibrugarh frontier tract).	Cachar (excluding the North Cachar frontier tract).
Durrung.	Kamroop.		
Seebsaugur.	Nowgong.		

(*Notification, Chief Commissioner, Assam, No. 53 of 2nd July* 1885.)

District Magistrates' Courts.

V.—The above rules, *mutatis mutandis*, shall apply to the selection of jurors in cases before District Magistrates, in which the accused is a European British subject, and claims to be tried by a mixed jury [s. 451 (*a*), Cr. Pr. C.] Such jurors shall be selected from the persons summoned, under the provisions of s. 462 of the Code, to attend for the purposes of the trial.—*Rule No.* 4 *of 25th June* 1885 ; *Wilkins*, Addenda, p. 90.

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Names of jurors to be called.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated :

Objection to jurors.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Objection without grounds stated.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

Ground of objection.

(*a*) some presumed or actual partiality in the juror ;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years ;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs ;

(*d*) his holding any office in or under the Court ;

(*e*) his executing any duties of Police or being entrusted with Police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted ;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Decision of objection.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276 ; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court

Supply of place of juror against whom objection allowed.

considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury.

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

This is new, altering the law as laid down by *Reg.* v. *Lakshuman Ramchandra*, 3 Bom. H. C. Cr. 56, where it was held that it was not necessary, in a trial before a Court of Session, that the jurors should be sworn.

Procedure when juror ceases to attend, &c.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

In each of such cases the trial shall commence anew.

Under s. 332, *post*, a juror or assessor is liable to a fine of Rs. 100 for non-attendance.

Where, at the close of a trial, one of the assessors was discovered to be so deaf and blind as to be incapable of understanding the proceedings, the trial was held to be null and void.—*Mad. H. C. Pro.*, 22*nd July* 1869; *Weir*, p. 3.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

D.—Choosing Assessors.

Assessors how chosen.

284. When a trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

The actual trial with the aid of the assessors does not begin until the charge has been read and the accused claims to be tried.—*Emp.* v. *Bastiano*, I. L. R. 15 Bom. 514.

The same assessors may aid in the trial of as many accused persons successively as the Court thinks fit. See note to s. 72, *supra*.

Procedure when assessor is unable to attend.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

An assessor is liable to a fine of Rs. 100 for non-attendance—S. 332, *post*.

The law contemplates the continuous attendance of at least one assessor throughout the trial. Accordingly, when in the course of a trial with three assessors one died at an early stage, and later

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on another became too ill to attend, and finally the third assessor was obliged to retire during portion of the address of the pleader for the accused, it was held that the trial was without jurisdiction.—*Emp.* v. *Muhammad Khan*, I. L. R. 13 All. 337.

E.—Trial to close of cases for Prosecution and Defence.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

The prosecutor shall then examine his witnesses.

Examination of witnesses.

As to modification of procedure in case of previous convictions, sec. s. 310, *post*.

The witnesses must be examined. It is not sufficient, even with the consent of the pleader for the defence, to put in the depositions taken before the Magistrate, and allow the witnesses to be cross-examined upon them.—*Subba* v. *Emp.*, I. L. R. 9 Mad. 83.

Duty of Prosecution.—It is the duty of the Public Prosecutor, at a trial before the Court of Session, to call and examine all material witnesses sent up to the Court on behalf of the prosecution, and the Judge is bound to hear all the evidence upon the charge. But the Public Prosecutor, it was held by TYRRELL, J., is not bound to call any witnesses who would not, in his opinion, speak the truth, or support the points he desires to establish by their evidence; but in such circumstances he should explain to the Court that this is the reason for not calling these witnesses, and he should offer to put them in the box for cross-examination by the accused at their discretion. In the absence of any such explanation or other reasonable grounds apparent in the face of the proceedings, inferences unfavourable to the prosecution must be drawn from the non-production of its witnesses: *Emp.* v. *Tulla*, I. L. R. 7 All. 904. See *Dhunnoo Kazi*, I. L. R. 8 Cal. 121: *Emp.* v. *Kally Prosonno Das*, I. L. R. 16 Cal 245: *Emp.* v. *Stanton*, I. L. R. 14 All. 521: *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6.—See further notes to ss. 244 to 245, *supra*.

In Sessions cases, every vernacular (1) document, (2) deposition, or (3) examination of an accused person, admitted in evidence at the trial, shall be translated into English; and a copy of such translation fairly written out shall be incorporated in the record. Provided that, when a vernacular document, the contents of which are not relevant, is used in evidence for a limited purpose, such as to prove a signature, or handwriting, or the nature of writing materials, or the like, it shall not be necessary to make an English translation of the contents of such document. The translation of more than one document, deposition, or examination shall not be written on one sheet of paper.—*C. O. No.* 4 *of* 28*th February* 1884; *Wilkins*, Addenda, pp. 64 and 68.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Examination of accused before Magistrate to be evidence.

Section 80 of the Evidence Act (I of 1872) provides that "whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence given by a witness in a judicial proceeding, or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement, or confession was duly taken." See memorandum required under s. 164, *ante*.

A deposition given by a person is not admissible as evidence against him in a subsequent proceeding without its being first proved that he was the person who was examined and gave the deposition.—In the case of *Emp.* v. *Durga Sonar*, I. L. R. 11 Cal. 580, a pardon had been tendered to an accused, and his evidence was recorded by the Magistrate. Subsequently the pardon was revoked, and he was put on trial before the Sessions Judge with the other accused. His former deposition was put in and used without any proof that he was the person who was examined before the Magistrate. The deposition was held to be inadmissible.—See *Reg.* v. *Nussuruddin*, 21 W. R. Cr. 5.

As to examining the prisoner during the course of a trial, see s. 342, *infra*, and notes to ss. 209 and 253, *ante*.

This section only refers to the examination of an accused by or before the committing Magistrate, but a confession taken under s. 164, *ante*, is also admissible. See s. 533, *post*. It is apparently not optional with the prosecution to put in the examination of the accused.—*Emp.* v. *Rama Tevan*, I. L. R. 15 Mad. 352, p. 353.

Section 30 of the Evidence Act provides that "when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. [*Explanation.*—Offence as used in this section includes the abetment of or attempt to commit this offence—*Act III of* 1891 *s.* 4.]

Illustrations.

"(*a*) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession as against B.

"(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, 'A and I murdered C.' This statement may not be taken into consideration by the Court as against A, as B is not being jointly tried."

Although the confession of a prisoner affecting himself and another person charged with the same offence is, when duly proved, admissible as evidence against both, such person cannot, when it is uncorroborated as against him, be legally convicted on it.—*Emp.* v. *Ashootosh Chuckerbutty*, I. L. R. 4 Cal. (F. B.) 483: (S. C.) 3 C. L. R. 270: *Pro.*, 16*th October* 1876, I. L. R. 1 Mad. 163: *Venkatasami* v. *Reg.*, I. L. R. 7 Mad. 102.

A deposition given by a person to whom a conditional pardon has been tendered is not, after withdrawal of the pardon, admissible against him on a subsequent proceeding or on the trial of himself with his accomplices, unless it is first proved that he was the person who was examined and gave the deposition (*Emp.* v. *Durga Sonar*, I. L. R. 11 Cal. 580); and apparently a confession made by an accused before a Court other than the Court trying him could not be used against him or against persons tried jointly with him without evidence being given, identifying him as the person who made the confession. See the note to s. 164, *supra*, as to the use of confessions on joint trials, p. 143. A confession of one of several accused persons made in the absence of the others is of no weight as against the latter. Such confessions, like statements of approvers, are always regarded as tainted.—*Emp.* v. *Bipin Biswas*, I. L. R. 10 Cal. 970.

A Judge should charge a jury that mere confessions of prisoners tried simultaneously for the same offence are only to be rated as evidence of a very defective character as against others than those who made them, and that they require especially careful scrutiny before they can be safely relied on.—*Reg.* v. *Sadhu Mundul*, 21 W. R. Cr. 69.

Where two persons are accused of an offence of the same definition or arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through acts separable from those ascribed to his accomplice, and capable therefore of constituting a separate offence from that of the accomplice.—*Emp.* v. *Nur Mahomed*, I. L. R. 8 Bom. 223: see *Reg.* v. *Purbhudas Ambaram*, 11 Bom. H. C. R. 90.

An admission by certain persons that the crime charged against them was committed by certain other persons, and that whatever share they had in it was under compulsion, is not a confession upon which any person ought to be convicted.—*Queen* v. *Kisto Mundul*, 7 W. R. Cr. 8.

It is not necessary for a Sessions Judge to read out to prisoners confessions made by them before a Magistrate, and ask them whether they have any objection to the reception of these confessions. The examination of prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *primâ facie* proof of the circumstances.—*Queen* v. *Misser Sheikh*, 14 W. R. Cr. 9. See further note to s. 298, *post*.

Before criminating a man on his own statement under examination, the Court should be satisfied that such statement was deliberately made and recorded; that, after being recorded, it was shown or read to the accused, so that he might be assured that his words were correctly taken down, and those important circumstances should be attested by the signature of the Magistrate following the certificate mentioned in s. 346 (s. 364 of the present Code), which is to be given under his own hand.—*Queen* v. *Mussamut Niruni*, 7 W. R. Cr. 40.

And where a statement made by a prisoner before a Magistrate, though signed by the Magistrate, does not contain such certificate, it does not of itself constitute *primâ facie* evidence of the examination within the meaning of this section; and if other proof is not given (now under s. 533, *post*) to shew that the statement was made by the prisoner before the Magistrate, the statement is not admissible as evidence at the Sessions.—*Queen* v. *Petumber Dhoobee*, 14 W. R. Cr. 10.

A prisoner may be convicted on his own uncorroborated confession (*Queen* v. *Runjeet Sontal*, 6 W. R. Cr. 73), even in a case of murder.—*Queen* v. *Hyder Julaha*, *ib.* 83.

A confession before the Magistrate, though afterwards retracted before the Sessions Court, is evidence against the party making it (*Queen* v. *Mussamut Jema*, 8 W. R. Cr. 40); provided the Judge be satisfied that it was made voluntarily.—*Queen* v. *Sreemuty Mongola*, 6 W. R. Cr. 81; but a retracted confession should be supported by independent reliable evidence corroborating it in material particulars.—*Emp.* v. *Barappa*, I. L. R. 12 Mad. 123: *Emp.* v. *Rangi*, I. L. R. 10 Mad. 293: see *Reg.* v. *Amanulla*, 12 B. L. R. App. 15: and it seems that where depositions used under s. 288 are the only corroboration they are not sufficient.—*Emp.* v. *Barappa*, I. L. R. 12 Mad. 123.

At the Sessions trial the prisoner retracted his statement when it was read over to him, and said that he was compelled to make it. The Judge without making any inquiry or taking any evidence on the point submitted the prisoner's statement to the jury as a confession. It was held that the Judge was wrong in so doing, and that he should rather have charged the jury not to accept the prisoner's statement as a confession.—*Queen* v. *Ganesh Koormee*, 4 W. R. Cr. 1.

A Sessions Judge should compare the statements of the witnesses recorded by the Magistrate at the preliminary investigation with the evidence of the same witnesses at the Sessions [*Queen* v. *Hindabun Bowree*, 5 W. R. Cr. 54, *per* NORMAN and L. S. JACKSON, JJ. (CAMPBELL J. dissenting)]; and it was held by WILSON, J., he may direct the attention of the jury to discrepancies between the evidence given by witnesses in the Sessions Court and that given before the Magistrate without the depositions being put in.—*Emp.* v. *Haran Chunder Mitter*, 6 C. L. R. 390.

The examination of the accused before the Magistrate must be given in evidence at the Sessions trial, whether it tells for or against the prisoner, and it is not in the discretion of the prosecution to put in that examination or not.—*Queen* v. *Sheikh Mehar Chand*, 13 W. R. Cr. 63: *Queen* v. *Misser Sheikh*, 14 W. R. Cr. 9: *Emp.* v. *Rama Tevan*, I. L. R. 15 Mad., p. 353.

Examinations of accused persons, depositions, &c., how received in evidence at a Sessions trial.—(*a*) The 'examination of the accused person,' which is directed by s. 287 of the Code of Criminal Procedure, shall be tendered by the prosecution and read as evidence *before the accused is called upon to enter on his defence.*

(*b*) So also should be the deposition of a medical witness which "may be given in evidence" (*s.* 509), and the examination of a witness in a case in which it 'may be given in evidence' under s. 33 of the Evidence Act (if it is considered desirable on the part of the prosecution to put in such examination).

(*c*) Before examinations are received as evidence under any of these three sections, care must be taken to see that they are in proper form and duly attested, or otherwise strictly proved. And under s. 33 of the Evidence (Act, I of 1872), the examination cannot be given as evidence unless it is proved that the witness, whose examination it is proposed to put in, is dead, or the Court is satisfied that for sufficient cause his attendance cannot be procured.

(*d*) Such examinations, when so received, are to be detached from the proceedings in the preliminary inquiry and *annexed* to the record of the trial.—*Cal. H. C. C. O. No.* 11 *of 2nd September* 1807; *Wilkins*, p. 114.

(*e*) *Confessions to be Translated.*—When confessions or examinations of accused persons made before a Magistrate form part of the evidence against the persons committed for trial to the Court of Session, they should be accompanied by translations into English fairly written out.—*Cal. H. C. C. O. No.* 4 *of 10th August* 1872; *Wilkins*, p. 114.

In a trial before a Court of Session, the examination of the accused person which this section requires to be given in evidence should be read as part of the case for the prosecution before the defence is entered upon and marked as an exhibit. A note to the effect that this has been done should be entered in the record.—See *Mad. H. C. Pro.*, *31st March and 11th November* 1869; *Weir*, p. 44.

Evidence given at preliminary inquiry admissible.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

The witness must be *produced and examined* before the Judge in order that his depositions may be treated as evidence under this section.

Under s. 512, *post*, if it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable.—S. 512, *post*. See note to that section. See *In re Dhum Mundul*, 6 C. L. R. 53.

Section 33 of the Evidence Act, (I of 1872,) provides that "evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

"Provided that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; and that the questions in issue were substantially the same in the first as in the second proceeding.

"*Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and accused within the meaning of this section."

In *Reg.* v. *Arjun Megha*, 11 Bom. H. C. R. 282, WEST, J., said: "We think that the purpose of s. 249 of the Criminal Procedure Code (Act X, 1872), as recently amended, is to make depositions given before Magistrates in the preliminary inquiry, evidence for the purposes of the trial in the Court of Sessions, only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But we think that the exercise of this discretion, considering it as a matter of fact or of law, is open to review by this Court in appeal. When a case is under trial in a Court of Session, the Sessions Judge has the depositions given in the Magistrate's Court before him. If he finds that the statements of the witnesses in his own Court differ materially from those previously made by the same witnesses, it is his duty to examine them as to the discrepancies, and this is more specially his duty when the prisoners are undefended, and contradictory testimony is given for the prosecution. But if he thus examines the witnesses, he ought (See Taylor on Evidence, ss. 1300, 1301, and Indian Evidence Act, s. 155), in ordinary cases, to make the depositions upon which he has examined them evidence in the case; he is at liberty to do so, and the power should be exercised so as to bring all relevant matter, so far as possible, under consideration in forming a judgment on the case. If the Sessions Judge has omitted to examine witnesses on obvious and important discrepancies in their statements, this Court will, in general, direct that such an examination be made, and the Sessions Judge, having the witnesses before him for such a purpose, will, in most cases, feel it his duty to make the former depositions evidence *quantum valeat* for the purposes of the final adjudication in appeal. The alternative is for this Court in such cases to order a new trial, on the ground that there has been a misuse of the Sessions Judge's discretion which may have caused a defeat of justice; but a new trial will not be ordered except in special cases."

Under s. 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and opportunity to cross-examine.—*Reg.* v. *Etwaree Dharu*, 21 W. R.

Cr. 12. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act: *Emp.* v. *Burks*, I. L. R. 6 All. 224: see *Reg.* v. *Lukhun Santhal*, 21 W. R. Cr. 56. The former deposition must have been made before a person authorized by law to take it. If it was taken in a proceeding pronounced to be *coram non judice*, it cannot be used.—*Rama Reddy*, I. L. R. 3 Mad. 48.

In the case of *Joyadee Paramanick*, 7 C. L. R. 66, FIELD, J., expressed a grave doubt, whether the deposition of an approver taken before the committing Magistrate might be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. A similar doubt was expressed by the Court (PRINSEP and TOTTENHAM, JJ.) in the case of *Nanha Malla* v. *Emp.*, 13 C. L. R. 326.

This section, it has been recently held, was never intended to be used so as to enable a Court trying a case to take a witness's deposition bodily from the committing Magistrate's record and to treat it as evidence before the Court itself.—*Emp.* v. *Dan Sahai*, I. L. R. 7 All. 862. It contemplates the evidence recorded by the committing Magistrate as not being ordinarily evidence in the case. It is only in case of individual witnesses, "if such witnesses are produced and examined," that the Judge may, in his discretion, treat their evidence as evidence in the case.—*Subha* v. *Emp.*, I. L. R. 9 Mad. 89: see *Shib Dyal* v. *Emp.*, Punj. Rec., 1883, p. 54: *Reg.* v. *Majohur Roy*, 24 W. R. Cr. 11. In the case of *Shib Dyal* v. *Emp.*, Punj. Rec., 1883, p. 54, the evidence of a witness in an inquiry upon a charge of murder was taken in the presence of the accused by the Magistrate, who, being of opinion that the witness was concerned in the murder, committed her for trial to the Sessions Court with the original accused. In the Sessions Court the deposition was used, but it was held to have been wrongly used, as she was not under this section of the Code produced and examined as a witness.

Where a Judge proposes to contradict witnesses by their statements made before the committing Magistrate, he is bound to put to them the whole or such portions of their depositions as he intends to rely upon in his decision, so as to afford them an opportunity of explaining their meaning or denying that they had made any such statement.—*Emp.* v. *Dan Sahai*, I. L. R. 7 All. 862.

The statement of a prisoner, whether taken as a confession or an examination, may be received as evidence.—*Reg.* v. *Suneechur*, 5 W. R. Cr. 1. As to the formalities required, see *Reg.* v. *Nussuruddin*, 21 W. R. Cr. 5, and Evidence Act, s. 80, and s. 164, *ante*. The certificate of a Magistrate appended to a confession, in order to afford *primâ facie* evidence, under s. 80 of the Evidence Act, of the circumstances mentioned in it relative to the taking of the statement, ought to give the facts necessary to render the deposition admissible under the section.—*Reg.* v. *Nussuruddin*, 21 W. R. Cr. 5. If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Sessions Court, the whole of it should be read out.—*Pro., 5th November* 1869: 5 *Mad. H. C. R.* 4*n*. But the deposition of a person is not admissible against him in a subsequent proceeding in which he is accused without proof that he made the deposition.—*Emp.* v. *Durga Sonar*, I. L. R. 11 Cal. 580.

Where the Sessions Judge considered that the evidence given before him was untrustworthy, but nevertheless convicted the accused, under the corresponding section of the former Code, upon the evidence given by the same witnesses before the committing officer, it was held that the conviction was bad.—*Queen* v. *Amanullah*, 21 W. R. Cr. 49: (S. C.) 12 B. L. R. Appx. 15. PHEAR, J., said: "The Judge founds his conviction of the prisoner upon the testimony which was given before another judicial officer, not before himself, by the very persons who according to his own view, before him showed themselves in the very same matter to be utterly unworthy of belief. Even if s. 249 (s. 288 of this Code) warranted the Court in taking such a step as this, it seems to me certainly an inordinately long step to take. And I might almost say that the logical consequence would be that the taking of evidence in the Sessions Court might be altogether dispensed with; for, if it is legitimate, proper, and safe that the Sessions Court should come to a verdict against the prisoner upon the evidence given before the Magistrate by witnesses who before the Sessions Court denied that evidence and showed themselves unworthy of belief, *à fortiori* it would be right, proper, and safe for the Sessions Court to found its judgment upon the evidence given before the Magistrate in those cases where the witnesses afterwards confirm that evidence by the testimony which they give in the Sessions Court. And I think that this very obvious consequence shows very conclusively that the Judge misapprehended the true scope of s. 249 (s. 288 of this Code) of the Criminal Procedure Code." . . . . . "It appears to me that the Legislature, in framing this enactment, desired merely to authorize the Court to take a particular statement made by a witness before the committing Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent therewith was made, by the witness before the Court itself, if the Court could see from the evidence of that same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief, not that the Court should discard wholly the testimony of witnesses given before it, and have recourse to the testimony of the same persons which was given elsewhere before another judicial officer on the occasion of making the investigation preliminary to the final trial. The discretion which is conferred by the passage 'if the Court thinks fit' in s. 249 [288] is to be exercised upon substantial materials rightly before the Court, and reasonably sufficient to guide the judgment of the Court as to the truth of the matter, and not as was the case here, upon mere speculation or conjecture." And MORRIS, J., said: "It seems to me that under s. 249 [288] of the Criminal Procedure Code, a Judge may base his judgment on the evidence given before the Magistrate in the presence of the accused, where there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is to a certain extent corroborated by independent testimony before himself. In the present instance there is nothing of this kind. There is really no one such substantive fact conclusively proved as can enable the Judge to say with confidence that the evidence given before the Magistrate was true as opposed to what was said before himself. Nor can it be said that the Police officer, or any other witness before the Court of Session, affords independent testimony corroborative of the evidence given before the Magistrate." In the case of *Emp.* v. *Dan Sahai*, I. L. R. 7 All. 832, STRAIGHT, J., expressed his approval of the remarks of PHEAR, J.

Depositions under this section (288) where they are the only evidence corroborating a confession which has been retracted are not sufficient to justify a conviction.—*Emp.* v. *Barappa*, I. L. R. 12 Mad. 123.

Upon an inquiry before a Magistrate in a case of murder, two vakeels presented their vakalutnamahs and applied to be allowed to conduct the defence of the accused. The Magistrate refused permission, and, after recording the depositions of the witnesses, committed the accused to take their trial before the Sessions Court. In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses, who, on being examined in the Sessions Court, denied all knowledge of the facts to which they had deposed before the Magistrate. Two of them denied having made the statements recorded, while the third admitted the statements attributed to him, but asserted that they were false and made under pressure. The Sessions Judge, disbelieving the statements made in his Court, thereupon used the previous depositions as evidence in the case, and mainly upon those convicted the accused of murder and sentenced them to transportation for life. Against this conviction and sentence the prisoners appealed to the High Court, on the ground that the previous depositions ought not to have been used as evidence in the case, as the Magistrate had refused to allow their pleaders to appear and cross-examine the witnesses who made the depositions. The High Court affirmed the sentence.—*In re Dhum Mundul*, 6 C. L. R. 53.

Procedure after examination of witnesses for prosecution.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

The words "the prosecutor may sum up his case" do not exclude the assistance of counsel.—*In re Narayen M. Pondeha*, 11 Bom. H. C. R. 102.

Where, on being asked under this section, the accused has stated that he means to adduce evidence, but on further consideration does not do so, the Court is not at liberty to make a presumption adverse to the accused from the circumstance that he has not adduced evidence.—*Hurry Churn Chuckerbutty* v. *Emp.*, 13 C. L. R. 358: (S.C.) I. L. R. 10 Cal. 140. In that case, at the close of the evidence for the prosecution, the attorney for the defence, in answer to the Judge, stated that he meant to call witnesses. The Court then adjourned; and, on the following day, the attorney stated that, on reconsideration, he did not intend to call witnesses. The Judge allowed the prosecution to reply. On appeal the High Court (PRINSEP and TOTTENHAM, JJ.) held that, although the strict interpretation of ss. 289 and 292 of the Code would warrant this course, it was never meant by the Legislature that the prosecutor should have a reply when no witnesses are called for the defence, the object of the law being evidently to let each side have an opportunity of commenting on the evidence of the other, and not to give an additional advantage to the prosecution in such a case as that before them.

So it was held in Calcutta and Bombay, that the fact that the accused had, during the cross-examination of the witnesses for the prosecution, used certain documents, and that such documents had been put in evidence on his behalf did not entitle the prosecutor to the right of reply, if, when asked upon the close of the case for the prosecution, whether he meant to adduce evidence, the accused said that he did not.—*Emp.* v. *Gross Chunder Banerjee*, I. L. R. 10 Cal. 1024: *Emp.* v. *Kaliprosonno Doss*, I. L. R. 14 Cal. 245: *Emp.* v. *Krishnaji*, I. L. R. 14 Bom. 436: *Emp.* v. *Solomon*, I. L. R. 17 Cal. 930. In Madras, however, these cases were dissented from in *Emp.* v. *Venkatapathi*, I. L. R. 11 Mad. 339. See s. 292, *post*. In Allahabad, also, it has been held that where documents are put in evidence by the defence during the course of the case for the prosecution, although the defence calls no witnesses, the prosecution has a right of reply.—*Emp.* v. *Hay field*, I. L. R. 14 All. 212, *per* KNOX, J., expressly dissenting from *Emp.* v. *Gross Chunder Banerjee*, I. L. R. 10 Cal. 1024: *Emp.* v. *Kaliprosonno Doss*, I. L. R. 14 Cal. 245: *Emp.* v. *Solomon*, I. L. R. 17 Cal. 930: and *Emp.* v. *Krishnaji*, I. L. R. 14 Bom. 436.

In England where any documents are put in on behalf of the accused at any time in the course of the trial the counsel for the prosecution has a right at the conclusion of the defence to address the jury in reply.—Roscoe Cr. Evd., p. 204 (11th edition); see *R.* v. *Edwards*, 8 C. and P. 26.

An accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was re-called after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial.—*Queen* v. *Assanoollah*, 13 W. R. Cr. 15. See notes to s. 256, *ante*.

If, on being called on to enter upon his defence and to produce his evidence, the accused makes any statement in defence, it ought to be recorded; if he does not voluntarily make any statement, and declines to answer any question put by the Court, the fact should be noted, and when there is nothing else to show the nature of the defence, a note of the address to the Court, if any, should be recorded. The record is not complete unless it shows the nature of the defence set up.—*In re Gopal Hajjam*, 15 W. R. Cr. 16.

Witnesses for the defence ought not to be examined until after the evidence for the prosecution has been taken, for it is only when sufficient evidence has been produced against him that an accused can be called upon to go into his defence.—*In re Turibullah*, 4 C. L. R. 338.

In conducting a case for the prosecution, all persons who are alleged or known to have any knowledge of the facts ought to be brought before the Court and examined. It is not a valid ground for the non-production of witnesses in the Sessions Court that they had been examined by the committing Magistrate against the express wish of the Police-officer in charge of the prosecution.—*Emp.* v. *Ram Sahai Lal*, I. L. R. 10 Cal. 1070.

If an accused person has not his witnesses present, the Judge should, if he sees grounds for proceeding, first call upon him for his defence and then postpone the case.—*Queen* v. *Jumiruddin*, 23 W. R. Cr. 58. See also *Queen* v. *Ishan Dutt*, 6 B. L. R. Appx. 88: (S. C.) 15 W. R. 34.

"*No Evidence.*"—When there is nothing in the evidence which, if believed, amounts to proof, the case should not be left to the jury (*Queen* v. *Greedharee Manje*, 7 W. R. Cr. 39), as a verdict of guilty cannot, under the circumstances, be sustained (*Queen* v. *Rutton Dass*, 16 W. R. Cr. 19); but if there is some evidence, the case must go to the jury, even though the Judge disbelieves the evidence.—*Re Hurroo Shaha*, 16 W. R. Cr. 20; for the words "no evidence" in the 2nd and 3rd paragraphs of the section are not to be read as meaning "no satisfactory, trustworthy or conclusive evidence."—*Emp.* v. *Vajiram*, I. L. R. 16 Bom. 414. If there is evidence, the trial must go on to its close.—*Ibid*: *Emp.* v. *Munna Lal*, I. L. R. 10 All. 414.

It would seem from *Reg.* v. *Parvati*, 7 Bom. H. C. R. C. C. 82, which was decided under Act XXV of 1861, s. 372, that when a judgment of acquittal is recorded, it is not necessary to ask the assessors their opinion. See also *In re Narain Das*, I. L. R. 1 All. 610*n*.

Cross-Examination.—It will be observed that while s. 290 expressly provides for the cross-examination of the witnesses for the defence, this section is silent as to the cross-examination of the witnesses for the prosecution by the accused. An accused person, however, is always entitled to cross-examine the witnesses for the prosecution. See notes to s. 256, *ante*, and s. 128 of the Evidence Act, I of 1872. The Court cannot refuse even to allow the cross-examination of a witness called by itself.—*In re Greesh Chunder Talukdar*, 5 C. L. R. 364: (S. C.) I. L. R. 5 Cal. 614. A Judge ought, it has been held, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken for the prosecution before the committing Magistrate, but whose evidence is dispensed with at the trial. His refusal to do so is not an error in law, though matter for comment by the counsel for the accused.—*Reg.* v. *Fattechand Vastachand*, 5 Bom. H. C. R. Cr. 85: *Emp.* v. *Greesh Chunder Talukdar*, 5 C. L. R. 364: (S. C.) I. L. R. 5 Cal. 614: *Emp.* v. *Tulla*, I. L. R. 7 All. 904. See *Emp.* v. *Kaliprosonno Doss*, I. L. R. 14 Cal. 245: *Emp.* v. *Solomon*, I. L. R. 13 Cal. 930. In *Emp.* v. *Stanton*, I. L. R. 14 All. 521, it was said that all the prosecution is bound to do is to have witnesses who were examined before the committing Magistrate present at the trial so as to give the Court or counsel for the defence an opportunity of examining them.—*Per* KNOX, J.

Duties of Prosecution.—The relative duties of the prosecution and the defence were described in the following remarks made in the case of *Dhunnoo Kazi*, 10 C. L. R. 151: (S. C.) I. L. R. 8 Cal. 121.

"The only legitimate object of a prosecutor is to secure not a conviction, but that justice may be done. The prosecutor, therefore, is not free to choose how much evidence he will bring before the Court. He is bound to produce all the evidence in his power directly bearing on the charge. It is *primâ facie* his duty accordingly to call those witnesses who, from their connection with the transaction in question, must be able to give important information. The only thing that can relieve the prosecution from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. If such witnesses are not called without sufficient reason being shown (and the mere fact of their being summoned for the defence seems to us by no means necessarily a sufficient reason), the Court may properly draw an inference adverse to the prosecution.

There is no corresponding obligation upon the accused. He is merely on the defensive, and owes no duty to anyone but himself. He is at liberty, as to the whole, or any part of the case against him, to rely on the weakness of the case for the prosecution or to call witnesses, or to meet the charge in any other way he chooses. And no inference unfavourable to him can properly be drawn, because he takes one course rather than another."—*Per* WILSON, J. The case of *Dhunnoo Kazi* was referred to and approved in *Hurry Churn Chukerbutty* v. *Emp.*, 13 C. L. R. 358: (S. C.) 10 Cal. 140. See *Emp.* v. *Ram Sahai Lal*, I. L. R. 10 Cal. 1070; and *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6.

In Sessions cases the prosecution is not bound to call any witness or tender a witness called before the Magistrate for cross-examination. It is not bound to do more than have the witnesses called before the Magistrate present in Court for the accused to call them or not as he thinks fit.—*Emp.* v. *Kaliprosonno Doss*, I. L. R. 14 Cal. 245: *Emp.* v. *Stanton*, I. L. R. 14 All. 521.

Witnesses not to be kept waiting.—The evidence of witnesses should invariably be recorded as soon as possible after their attendance. If from unavoidable causes an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner.

Chief Magistrates of Districts should carefully supervise the returns of their subordinates, as they will be held responsible for the correction of irregularities.—*Cal. H. C. C. O. No.* 12 *of 27th November* 1865; *Wilkins*, pp. 7, 8.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

Defence.

If the accused makes any statement in defence, it ought to be recorded; if he does not voluntarily make any statement and declines to answer any question put by the Court, the fact should be noted; and when there is nothing else to show the nature of the defence, a note of the address to the Court, if any, should be recorded. The record is not complete, unless it shows the nature of the defence set up.—*In re Gopal Hajjam*, 15 W. R. Cr. 16.

In the trial of warrant-cases by Magistrates an accused may put in a written statement, and the Court is bound to record it.—*S.* 256, *ante*. There appears to be no reason why he should not do so in the High Court or Sessions Court.

Under s. 340, *post*, every person accused before any Criminal Court may of right be defended by a pleader. See s. 4 (*u*), *ante*.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Right of accused as to examination and summoning of witnesses.

A prisoner is entitled, as a matter of right, to have any witnesses named in the list which he delivers to the Magistrate summoned and examined (*Queen* v. *Prosunno Coomar Moitro*, 23 W. R. Cr. 56: *Queen* v. *Bhooban Isher Gosamee*, 2 W. R. Cr. 6: *Queen* v. *Abdool Setar*, 3 W. R. Cr. 36); but he is not entitled as of right to have witnesses not named by him before the Magistrate summoned at the sessions trial.—*Queen* v. *Boidnath Singh*, 3 W. R. 29. But the Judge of the Sessions Court has an inherent power, if he thinks proper to exercise it, to sanction the summoning of witnesses other than those named in the list delivered to the committing Magistrate.—*In re Rajah of Kantit*, I. L. R. 8 All. 668. See s. 540, *post*.

There is no reason to refuse an application for summons, simply because a large number of witnesses is mentioned therein.—*Harendro Narain Singh* v. *Bhobani Prea Babuani*, I. L. R. 11 Cal. 762.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

Prosecutor's right of reply.

It was only where evidence was actually adduced on behalf of the accused that the prosecutor under the former Codes was entitled to a reply. Where, on being asked under this section, the accused has stated that he means to adduce evidence, but on further consideration does not do so, the Court is not at liberty to make a presumption adverse to the accused from the circumstance that he has not adduced evidence.—*Hurry Churn Chuckerbutty* v. *Emp.*, 13 C. L. R. 358: (S.C.) I. L. R. 10 Cal. 140. In that case, at the close of the evidence for the prosecution, the attorney for the defence, in answer to the Judge, stated that he meant to call witnesses. The Court then adjourned; and, on the following day, the attorney stated that, on reconsideration, he did not intend to call witnesses. The Judge allowed the prosecution to reply. On appeal the High Court (PRINSEP and TOTTENHAM, JJ.) held that, although the strict interpretation of ss. 289 and 292 of the Code would warrant this course, it was never meant by the Legislature that the prosecutor should have a reply when no witnesses are called for the defence, the object of the law being evidently to let each side have an opportunity of commenting on the evidence of the other, and not to give an additional advantage to the prosecutor in such a case as that before them.

So in Calcutta and Bombay it was held that the fact that the accused had, during the cross-examination of the witnesses for the prosecution, used certain documents, and that such documents had been put in evidence on his behalf did not entitle the prosecutor to the right of reply, if, when asked upon the close of the case for the prosecution, whether he meant to adduce evidence, the accused said that he did not.—*Emp.* v. *Grees Chunder Banerjee*, I. L. R. 10 Cal. 1024: *Emp.* v. *Kaliprosonno Doss*, I. L. R. 14 Cal. 245: *Emp.* v. *Solomon*, I. L. R. 17 Cal. 930: *Emp.* v. *Krishnaji*, I. L. R. 14 Bom. 436. In Madras and Allahabad, however, it has been held that if documents are

put in evidence on behalf of the accused during the cross-examination of the witnesses for the prosecution, the counsel or pleader for the prosecution is entitled to reply.—*Emp.* v. *Venkatopathi*, I. L. R. 11 Mad. 339: *Emp.* v. *Hayfield*, I. L. R. 14 All. 212, *per* KNOX, J., who expressly dissented from the view taken by the Calcutta and Bombay High Courts in the cases referred to above.

Evidence as to Character.—In England, when the evidence for the defence is only as to character, the right to a reply still exists, but it is seldom exercised—Roscoe's Criminal Evidence, pp. 202, 205 11th Edition: *R.* v. *Dowse*, 4 F. and F. 492. Under this Code also there appears to be nothing to deprive the counsel or pleader for the Crown replying when the accused has called witnesses as to character. In Calcutta the right under such circumstances is usually, if not always, waived.

View by jury or assessors.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place which shall be shown to them by a person appointed by the Court.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

In cases of view by assessors of the scene of the alleged offence, the Judge cannot delegate his own function of examining witnesses on the spot to the assessors, who may not, under this section, speak to, or communicate with, any other person than the officer appointed to conduct them to the place.—*Queen* v. *Chatterdharee Singh*, 5 W. R. Cr. 59.

If the Court considers it necessary to visit the place of the alleged occurrence of an offence under trial, he should give notice to the parties, or in case of a trial by jury or with the aid of assessors, to the jury or assessors. See *Outh Behari Narain Singh*, 1 C. L. R. 143.

When juror or assessor may be examined.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined in the same manner as any other witness.

A person having to exercise judicial functions may give evidence in a case pending before him, when such evidence can and must be submitted to the independent judgment of other persons exercising similar judicial functions sitting with him at the same time.—*Queen* v. *Mookta Sing*, 13 W. R. Cr. 60. In that case NORMAN, J., said: "I think it pretty clear that a prisoner has a right to have the evidence of a Sessions Judge who is trying him, taken on a point which he thinks makes in his favour. . . . . No doubt it is extremely inconvenient that a Judge sitting without a jury should try a case in which he himself is the complainant and principal witness. I should have no doubt that if he has any personal or pecuniary interest in the subject of the charge, he is disqualified from trying it. But if that is not the case, if the Judge in making the complaint has merely acted in discharge of his duty as a public officer, I think we must say that he is not incompetent to try the case."

See, as to disqualifying interest of a Magistrate or Judge, s. 555, *infra*.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Section 332, *post*, provides:—"Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees. Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order. In default of recovery of the fine by such attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term." And s. 318 provides:—"Any person summoned under s. 315, s. 316 or s. 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend, after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid."

Locking-up jury.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and subject to such rules, the presiding Judge may order whether, and in what manner, the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

The following rule was made by the Bombay High Court under s. 65 of Act X of 1875 :
"In every case involving the punishment of death, or of transportation for life, in which the trial lasts for more than one day, the jury shall be kept together during the trial by the Sheriff or Deputy Sheriff, or such other officer as the presiding Judge may appoint for that purpose ; and in every other case in which the trial shall last for more than one day, it shall be in the discretion of the presiding Judge whether the jury shall be kept together in manner aforesaid, or shall be allowed to return to their respective homes."—*Bombay Gazette*, 1875, p. 653.

F.—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

If the provisions of this section are neglected, and the Judge does not sum up the evidence all, a new trial will be directed.—*Queen* v. *Shumshere Beg*, 9 W. R. Cr. 51.

A jury may be satisfied with a minimum of proof, and it is beyond the power of the High Court, in cases where the evidence is very slight, to interfere with the verdict. But when there is nothing which can, if believed, amount to proof, the Judge ought to charge the jury for an acquittal, and not leave the jury to say whether the prisoner is guilty or not (*Queen* v. *Groodhuree Manjee*, 7 W. R. Cr. 30), or the case should not be put to the jury at all, as a verdict of guilty cannot, under such circumstances, be sustained at all.—*Queen* v. *Rutton Dass*, 16 W. R. Cr. 19. See s. 289, *supra*.

In charging a jury, a Sessions Judge should not tell them that the prisoner had previously been of bad character. That fact, it was said, may be taken into consideration by a Sessions Judge in passing sentence when the prisoners are convicted (*Queen* v. *Kulum Sheikh*, 10 W. R. Cr. 39). Nor ought a Judge to introduce into his direction to the jury any question as to recommending a prisoner to mercy ; but should leave that entirely to the jury.—*Queen* v. *Dossee Mussulmany*, 14 W. R. Cr. 40.

He ought to caution a jury not to accept the evidence of an approver unless corroborated.—*Emp.* v. *Arumuga*, I. L. R. 12 Mad. 196.

It is not necessary that the direction to the jury should be reduced to writing before delivery ; but it is essential that the 'heads of charge' (s. 367) placed upon the record should represent with absolute accuracy the substance of the charge, and be such as to enable the High Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.—*Cal. H. C. C. M., No. 2 of 4th March* 1875 ; *Wilkins*, p. 117. Under s. 367, *post*, a Session Judge is bound to record the heads of the charge to the jury.

Sessions Judges should, in order to assist the inquiries of the District Magistrates regarding the cause of an acquittal in the Sessions Court, set forth clearly in the judgment what, in their opinion, has led to that result.—*Cal. H. C. C. O., No. 5 of 21st September* 1880 ; *Wilkins*, p. 116.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties ; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties ;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial ;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given ;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

As to what is meant by the relevancy of facts, see Evidence Act, I of 1872, s. 3, and Chap. II.

General duty of Judge.—In charging a jury, a Judge is not bound to do more than lay carefully and plainly before them the evidence as recorded by him, noting the discrepancies and inconsistencies, and pointing out generally the way in which it either favourably or unfavourably affects the person being tried.—*Queen* v. *Chunder Kumar Mozumdar*, 25 W. R. Cr., 54. He ought not, however, to refer to discrepancies between the evidence given at the trial and statements made to and recorded by the Police.—*Roghuni Singh*, 11 C. L. R. 569 (see s. 162, *supra*, which provides that such statements shall not be received in evidence). But he should state to the jury what are the principal points in the evidence, and how they bear for or against the prisoner, and, in short, render the jury every assistance in his power towards coming to a right conclusion.—*Queen* v. *Bulakee Kurmee*, 6 W. R. Cr. 72. While he is bound to advise the jury on questions of fact, and may tell the jury the impression which the evidence has made upon his own mind (*In re Dwarkanath Sen*, 13 W. R. Cr. 34), he has no right to pronounce his own judgment on the credibility of evidence and to withdraw the consideration of the due weight to be given to the evidence from the jury.—*In re Hurroo Shaha*, 16 W. R. Cr. 20. And although it is open to the Judge in charging a jury to express his opinion as to the effect of any portion of the evidence, he should always be careful to add that it is for the jury to form their own opinion.—*Emp.* v. *Bepin Biswas*, I. L. R. 10 Cal. 970.

A Judge should not give his opinion as to the guilt or innocence of a prisoner. He should merely give a general commentary on the evidence and a statement of what is the legal offence proved, should such evidence be credited.—*In re Bharut Chunder Christian*, 1 W. R. Cr. 2: *Queen* v. *Gunga Bishen*, *ib.* 26. It is his duty to give a direction upon the law to the jury so far as to make them understand the law as bearing on the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection.—*In re Jhubboo Mahton*, I. L. R. 8 Cal. 739: (S. C.) 12 C. L. R. 233, *per* FIELD, J.

In giving a warning to a jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points the witnesses made different statements, a Judge exercises a wise discretion, and affords no ground for an objection that he misdirected the jury.—*Queen* v. *Bustee Khan*, 1 W. R. Cr. 17.

He ought to caution the jury not to accept the evidence of an approver unless corroborated.—*Emp.* v. *Arumuga*, I. L. R. 12 Mad. 196.

Where a Sessions Judge left the jury to decide upon the age of a girl who had been kidnapped, merely aiding them with his own opinion, in which they expressed their concurrence, it was held that there was no misdirection.—*Queen* v. *Shama Khankee*, 7 W. R. Cr. 22.

A Judge should not leave it to the jury to find whether a communication is privileged or not, but should himself decide it as a point of law.—*Queen* v. *Chunder Kant Chuckerbutty*, 10 W. R. Cr. 14.

It has been considered that bare statements by prisoners are not admissible, and ought not to be alluded to by the Judge as evidence. Nor is evidence taken before the Magistrate, unless it is contradictory of the evidence of the same witness as given before the Sessions Court, evidence in the trial, and it should not be put to the jury.—*Queen* v. *Bhekoo Singh*, 7 W. R. Cr. 108. But, it has been held, the attention of the jury may be called to discrepancies between the evidence given by witnesses in such Court, and that given before the committing Magistrate without the depositions before the Magistrate being put in.—*Emp.* v. *Haran Chunder Mitter*, 6 C. L. R. 390: see *Queen* v. *Brindaban Bowree*, 5 W. R. Cr. 54, and notes to s. 288, *supra*.

When a prisoner is on his trial upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence and to leave them to find the facts and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty.—*Queen* v. *Shumshere Beg*, 9 W. R. Cr. 51: see *Elahee Buksh*, *Appellant*, 5 W. R. Cr. 80. Where a Sessions Judge, in charging a jury in a case of culpable homicide not amounting to murder, omitted to draw their attention to the two classes of culpable homicide mentioned in s. 304 of the Penal Code, the High Court considered that the accused were found guilty of the lighter description, and sentenced the prisoner accordingly.—*Queen* v. *Kalichurn Dass*, 15 W. R. Cr. 17.

It was held to be a misdirection on the part of a Judge to comment on the evidence for the prosecution and to contrast it with the course followed by the prisoner (*e.g.*, where he makes a simple denial of the charge coupled with a refusal to examine the witnesses in attendance), if the Judge leaves it to the jury to decide between the opposing statements and to credit whichever they think most worthy of belief.—*Queen* v. *Seetanath Ghosal*, 2 W. R. Cr. 60. On this point it will be useful to refer to the case of *Hurry Churn Chuckerbutty*, 13 C. L. R. 358: (S. C.) I. L. R. 10 Cal. 140—a case cited in the notes to s. 289, *supra*. In that case it was held that a prisoner, being at liberty to offer evidence or not as he thinks proper, no inference unfavourable to him could be drawn if he did not offer evidence.

The question of proof of previous convictions is one of fact, which ought to go to the jury and be determined by them.—*Queen* v. *Esan Chunder Dey*, 21 W. R. Cr. 40.

The duties of a Judge were thus stated by MARKBY, J., in the case of *Queen* v. *Nim Chund Mookerjee*, 20 W. R. Cr. 41: "So far as objections are taken to the summing up upon points of law, the High Court is bound to examine the Judge's observations with the greatest possible nicety, and to see that he has laid before the jury what the law is upon the case which they had to deal with, and that he has laid it down rightly. What a Judge says to a jury upon the law is an absolute and binding direction upon them. What he addresses to them upon the facts are only such observations as he thinks it necessary and proper to make in assisting them to arrive at a conclusion upon the evidence which it is wholly in their province to deal with as they think proper, and the observations which a Judge would make to a jury upon the facts would be determined by circumstances which must vary, one may almost say, in every case and in every tribunal in the country. They would vary in a very great degree according to the intelligence of the jury whom the Judge was addressing; they would also vary very much according as the case had or had not been fully discussed both for and against the prisoners by counsel prior to his addressing them. Had there been no discussion of a case by counsel, it would undoubtedly be necessary for the Judge to point out many things which, after the case had been fully discussed on both sides both for the Crown and for the prisoner, might well seem to him unnecessary. And, on the other hand, a Judge has very often to caution a jury against accepting without very careful consideration some of the suggestions that are made to them. When we are called upon to say whether or not the Judge has done his duty in addressing the jury on the facts, we must look to his summing up as a whole, and see that the case has been fairly laid before them."

It being incumbent upon the prosecution in a criminal case to produce all the evidence directly bearing on the charge or to account satisfactorily for the non-production of such evidence, it is the duty of the Judge to point out to the jury that if the prosecution do not call witnesses who, from their connection with the transaction, must be able to give important information, an inference adverse to the prosecution may be drawn unless sufficient reason is shown for not calling them, and the mere fact of their being summoned for the defence is not necessarily a sufficient reason. See *Dhunnoo Kazi* v. *Emp.*, 10 C. L. R. 151: (S. C.) I. L. R. 8 Cal. 121: approved in *Emp.* v. *Stanton*, I. L. R. 14 All. s. 521, which dissented from *Emp.* v. *Grish Chunder*, I. L. R. 5 Cal. 614, and *Emp.* v. *Ishan Dutt*, 15 W. R. Cr. 34. See *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6. A Sessions Judge holding a second trial ought not to comment on the evidence of a previous trial.—*Jamsheer Sirdar*, 1 C. L. R. 62. See Evidence Act, I of 1872, s. 105: *In re Devi Dutt*, 7 C. L. R. 193.

Misdirection.—There must be a positive misdirection or some error of law in the summing up in order to induce the High Court to interfere. The omission of a Judge to point out to the jury the weakness of the evidence against the accused, and the possibility of other persons being the guilty parties, does not amount to a positive misdirection. Where there is some evidence to go to the jury, the Court cannot interfere.—*Queen* v. *Choonee*, 5 W. R. Cr. 13. So the omission of a Judge to enter into details regarding the identification of stolen property does not amount to a misdirection.—*Queen* v. *Madhub Mal*, 1 W. R. Cr. 22. It being the duty of the Judge to give a direction upon the law to the jury so far as to make them understand the law as bearing upon the facts, there is a misdirection if he does not give them an explanation sufficiently comprehensive to enable them to decide the particular issue.—*In re Jhubboo Mahton*, I. L. R. 8 Cal. 739: (S. C.) 12 C. L. R. 233, *per* FIELD, J. See *Jaspath Singh* v. *Emp.*, I. L. R. 14 Cal. 164.

The omission of a Sessions Judge to tell the jury that the statement of one prisoner was not evidence against his fellow-prisoner, was held to be a material error and fatal to the trial, notwithstanding that the Judge dealt with the evidence against each prisoner separately.—*Queen* v. *Sheik Miya Valad Daud*, 6 Bom. H. C. R. Cr. 10: see *Queen* v. *Elahee Buksh*, 5 W. R. Cr. Rul. 80. A confession of one prisoner may be taken into consideration against two co-prisoners tried jointly with him.—*Evidence Act* (*I of* 1872) *s.* 30. But to render a statement of one person tried jointly with another for the same offence admissible against that other, it is necessary that it should amount to a distinct confession of the offence charged.—*Nur Bux Kazi* v. *Emp.*, I.L.R. 6 Cal. 279: (S. C.) 7 C.L.R. 385: *Emp.* v. *Daji Narsu*, I. L. R. 6 Bom. 288. In the latter case, WEST, J., said: "It is obvious that Govinda (one of the prisoners) did not intend to criminate himself. His intention is to exculpate himself and make Daji the murderer of Narsu. When a person admits guilt to the fullest extent and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth, and the Legislature provides (see s. 30 of the Evidence Act) that his statement may be considered against his fellow-prisoners charged with the same crime. By exculpating himself Govinda fails to provide this guarantee, and his statement must be set aside in weighing the evidence against Daji." See further the note to s. 239, *supra*, and also the cases cited at the beginning of note to s. 287, *supra*.

Where a jury, after retiring and after unanimously finding both prisoners not guilty of the charges framed against them, stated to the Judge that they thought an offence had been committed by one of the prisoners, but they were uncertain as to the section of the Penal Code applicable to the case, and the Judge thereupon made over to them a copy of the Penal Code leaving them to decide under what section the offence fell, it was held that the Judge had failed in his duty, and that he should have asked the jury what doubts they had as to the crime which had been committed and should have explained to them the law, and informed them what offence the facts would prove against the prisoner if they believed those facts.—*Jaspath Singh* v. *Emp.*, I. L. R. 14 Cal. 164.

A Judge has every right to call the attention of the jury to anything which appears to be a palpable alteration or blot on the face of a document alleged to be forged.—*Queen* v. *Kissor Mohun Dutt*, 17 W. R. Cr. 58.

It is a misdirection upon a pure question of fact for a Judge to put it to the jury in such a way as to leave no option to them but to adopt the view taken by the Judge.—*Emp.* v. *Hughes*, I. L. R. 14 All. 25.

Accomplices.—Although as a general rule it is unsafe to convict an accused on the uncorroborated evidence of an accomplice, a conviction founded upon such evidence of one or more accomplices alone is valid in law—Evidence Act, s. 133: *Emp.* v. *Gobardhan*, I. L. R. 9 All. 528: *Reg.* v. *Ramasami Padayachi*, I. L. R. 1 Mad. 394: *Emp.* v. *Hurdeo Das*, Weekly Notes, 1884, p. 286: *Emp.* v. *Ram Saran*, I. L. R. 8 All. 306: *Emp.* v. *Mugantal*, I. L. R. 14 Bom. 115. But the evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require.—*Elahee Buksh, Appellant*, 5 W. R. Cr. 89: see also *Queen* v. *Nawabjan*, 8 W. R. 19: *Queen* v. *Shumshere Beg*, 9 W. R. Cr. 51: *Queen* v. *Kali Churn Gangooly*, 7 W. R. Cr. 2: *Queen* v. *Mohima Chunder Dass*, 15 W. R. Cr. 37: Evidence Act, I of 1872, ss. 30 (amended by Act 111 of 1891) 114, *Ill. (b)* and 133: *Reg.* v. *Ramasami Padayachi*, I. L. R. 1 Mad. 394: and *Reg.* v. *Budhu Nanku*, I. L. R. 1 Bom. 475: *Emp.* v. *Arumuga*, I. L. R. 12 Mad. 196: *Emp.* v. *Buldeo*, I. L. R. 8 All. 509: *Emp.* v. *Kure*, Weekly Notes, 1886, p. 65. See *Reg.* v. *Mullins*, 3 Cox C. C. 526. See s. 337, *infra*. The omission to caution the jury not to accept the uncorroborated testimony of an accomplice has been held to amount to a misdirection—*Emp.* v. *Arumuga*, I. L. R. 12 Mad. 196.

A Judge may misdirect the jury as to what is corroboration of the testimony of an approver.—*Emp.* v. *Bepin Biswas*, I. L. R. 10 Cal. 970. As to what is legal corroboration, see that case and *Reg.* v. *Mulapabin Kapana*, 11 Bom. H. C. R. 193: *Reg.* v. *Budhu Nanku*, I. L. R. 1 Bom. 475: *Reg.* v. *Jaffer Ali*, 19 W. R. Cr. 57: *Reg.* v. *Naya*, 23 W. R. Cr. 24: and *Emp.* v. *Imdad Khan*, I. L. R. 8 All. 120, see p. 137: *Emp.* v. *Chayan Dyaram*, I. L. R. 14 Bom. 331: *Emp.* v. *Dosa Jira*, I. L. R. 10 Bom. 231: see *Emp.* v. *O'Hara*, I. L. R. 17 Cal. 642.

In the case of *Queen* v. *Sadhu Mundul*, 21 W. R. Cr. 69, PHEAR, J., said:—"In the case of a trial by jury, it is the function of the jury to ascertain the facts upon the evidence before them, and for that purpose to be guided by the law which is applicable, and it is in all cases the duty of the Judge to point out to them that law. It was, therefore, in the present case, the duty of the Judge to lay before the jury substantially to the effect just set out the principles relative to the reception of accomplices' testimony, which the Legislature sanctioned by the Indian Evidence Act; and we think the Judge was wrong in telling the jury that this case was one in which no caution or instruction from him was needed on this head. It is, in all cases where an accomplice's testimony is admitted, incumbent on the Judge to inform the jury of the results of the law bearing on this point substantially as we have endeavoured to explain it." And s. 114, *Ill. (b)* of the Evidence Act provides that the Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. The rule is that section coincides with the rule observed in England, that though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or Court credits the evidence, a conviction proceeding upon it is not illegal. Section 133 of the Evidence Act in unmistakable terms lays it down that a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to the section.—*Reg.* v. *Ramasami Padayachi*, I. L. R. 1 Mad. 394: and see *Reg.* v. *Budhu Nanku*, I. L. R. 1 Bom. 475. So in the case of *Emp.* v. *Krishna Bhat*, I. L. R. 10 Bom. 319, it was laid down that it is an established rule of practice that an accomplice must be corroborated by independent evidence as to the identity of every person whom he impeaches.

In the case of *Joyudee Paramanick*, 7 C. L. R. 60, FIELD, J., expressed a grave doubt, whether the deposition of an approver taken before the committing Magistrate might be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. A similar doubt was expressed by the Court (PRINSEP and TOTTENHAM, JJ.) in the case of *Nanka Malla* v. *Emp.*, 13 C. L. R. 326. The Allahabad High Court, in the case of *Reg.* v. *Hardewar*, 5 All. 217, held the evidence was not admissible.

Interference by High Court; Misdirection.—The High Court will not set aside the verdict of a jury only in such cases where, by a misdirection to the jury, the accused has been materially prejudiced, or where there has been a failure of justice.—*Queen* v. *Rajcoomar Bose*, 19 W. R. Cr. 71: (S. C.) 10 B. L. R. Appx. 37. See s. 537, *infra*.

In summing up the case to the jury, the Judge omitted to call their attention to the evidence of the witnesses for the defence. On appeal on the ground of misdirection, the High Court considered this evidence to be untrustworthy, and held, that the summing up was not defective on account of this omission on the part of the Judge.—*In re Rochia Mohato*, I. L. R. 7 Cal. 42. In that case the High Court had the evidence for the defence read.

In the case of *Lee Tu* v. *Emp.*, I. L. R. 4 Cal. 10, three persons, who were alleged to have been attacked and wounded in an affray, informed the Police on the same day that the persons who had attacked them were A, B, and C, and 18 days afterwards gave to the Magistrate inquiring into the case the names of four other persons as having with A, B, and C formed the attacking party. All seven were tried together before the Sessions Court, and the Judge omitted to call the attention of the jury that four out of the seven accused had not been mentioned until 18 days had passed over. This was held to be a misdirection.

In reviewing the charge of a Judge to a jury in the mofussil, it is sufficient to see whether the tendency of the charge taken as a whole has given a correct or incorrect direction to the mind of the jury, and it is not correct, it was said, to apply to such charge the criticisms which would be applied to a charge of a Judge in a Court in England.—*Queen* v. *Gogulao*, 12 W. R. Cr. 80.

Improper advice given by the Judge to the jury upon a question of fact, or the omission of the Judge to give that advice which a Judge in the exercise of a sound judicial discretion ought to give the jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court, on appeal or revision, in setting aside a verdict of guilty.—*Elahee Buksh, Appellant*, 5 W. R. Cr. 89, 92. Where a Judge in his charge to the jury admitted as receivable evidence a hearsay statement against the accused, and also an anonymous letter which was put in without an attempt to show how or by whom it was sent, it was held that the jury had been misdirected and the accused prejudiced, and a new trial was ordered.—*Queen* v. *Chunder Koomar Mozoomdar*, 24

W. R. Cr. 77. In another case, the High Court set aside the verdict of a jury, because the Judge in summing up omitted to point out the absence of evidence very material to the case of the prosecution, and because he directed the jury to attribute an undue importance to the statements or excuses made by the prisoner in the explanation of certain documents.—*Queen* v. *Gunga Govind Palit*, 23 W. R. Cr. 21.

When different trials are held at different times and against different prisoners in respect of the same crime, the Judge should deliver a fresh charge on each trial; it is not sufficient for him at the subsequent trials to read over his first charge to the jury.—*Queen* v. *Mahadeo*, W. R. Sup. Vol. 15.

Under s. 30 of the Evidence Act the Court may take into consideration a confession made by an accused person affecting himself and another person tried jointly with him against both the accused and that other person, but an accused person cannot be convicted solely on the confession of a fellow-prisoner tried jointly with him for the same offence, as although such confession may be taken into consideration it is not evidence within the meaning of the definition in s. 3 of the Evidence Act.—*Emp.* v. *Khandia*, I. L. R. 15 Bom. 66.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which, according to law, are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is, whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

It was held by the majority of a Full Bench (JACKSON, J., dissenting), in the case of *Queen* v. *Mahomed Humayoon Shah*, 21 W. R. 72, that a charge in which the accused was charged with having made two contradictory statements in the course of a judicial proceeding was a good charge, and that (PHEAR and JACKSON, JJ., dissenting) the Court or jury, in convicting, need not, by direct evidence, find which of the two statements was false; all that was necessary being that the Court or jury should find that the allegations made on this charge were true.

In the case of *Queen* v. *Sadhu Mandul*, 21 W. R. Cr. 69, PHEAR, J., said: "In the case of a trial by jury, it is the function of the jury to ascertain the facts upon the evidence before them, and for that purpose to be guided by the law which is applicable, and it is in all cases the duty of the Judge to point out to them that law."—See *Emp.* v. *Hughes*, I. L. R. 14 All. 25.

The question of proof of previous conviction is one of fact, which ought to go to the jury and be determined by them.—*Queen* v. *Esan Chunder Dey*, 21 W. R. Cr. 40.

Where the accused stated, in answer to a charge of murder, that he had killed his wife, but that he had done so in consequence of having discovered her in an act of adultery on the previous day, it was held that the statement did not amount to a plea of guilty, and that it was the duty of the Court, under cl. (*c*) of s. 298, to try whether the provocation disclosed was sufficiently grave and sudden to reduce the offence.—*Nelat Luskar* v. *Emp.*, I. L. R. 11 Cal. 410.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Delivery of verdict.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Procedure where jury differ.

Where a jury is not unanimous, the Judge is not bound to summon a new jury.—*Queen* v. *Urjoon Biswas*, 1 W. R. Cr. 41.

Where a jury is unanimous, their verdict must be received, unless it be contrary to law: the Court is not competent in such a case to direct it to reconsider its verdict.—*Emp.* v. *Mahaddi*, 6 C. L. R. 349: (S. C.) *Govt. of Bengal* v. *Mahaddi*, I. L. R. 5 Cal. 871.

303. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Such questions and the answers to them shall be recorded.

Verdict to be given on each charge.

Judge may question jury.

Questions and answers to be recorded

Section 238, *supra*, also enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence.—*Govt. of Bengal* v. *Mahaddi*, I. L. R. 5 Cal. 871: (S. C.) 6 C. L. R. 349. There the accused were charged under s. 149, coupled with s. 325 of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt, and it was held that the verdict was legally sustainable, although that offence did not form the subject of separate charge. See remarks of SARGENT, C. J.—*Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200: and *Emp.* v. *Harai Mirdha*, I. L. R. 3 Cal. 189.

In *Reg.* v. *Mahomed Hoomayoon Shaw*, 13 B. L. R. 324, where a person was convicted of giving false evidence upon an alternative charge, the majority of the Full Bench (JACKSON and PHEAR, JJ., dissenting) held that the conviction was good, notwithstanding that the jury had not distinctly found which of the two statements was false. JACKSON, J., was of opinion that such a charge was bad, and further, that an alternative finding upon such a charge was invalid, while PHEAR, J., considered that, although a person might be lawfully tried upon such a charge, the jury or the Court must, for a conviction, find specifically which branch of the alternative was true.

Where perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken in the case in which it is tried. If the whole proof consists of two conflicting statements, an alternative charge and finding are the regular course.—*Mad. H. C. Pro., 30th November 1874*; *Weir*, p. 5: *Pro., 4 Mad. H. C. R. 1874*; *Weir*, pp. 4, 5. See notes to ss. 236–8. See also notes to s. 307, *post*. But s. 236 applies to cases in which, not the facts are doubtful, but the application of the law to the facts is doubtful. Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty.—*Queen* v. *Jamurha*, 7 N.-W. P. 137.

The law does not prescribe any specific form in which the jury are to return their finding: they are at liberty, therefore, to deliver it in any form which they think fit, and if that finding is not exhaustive as to the facts in issue which go to make up the charge or charges, it is the duty of the Judge to put such questions as shall elicit a complete finding.—*Queen* v. *Hari Prosad Gangooly*, 8 B. L. R. 357.

In the case of *Queen* v. *Wuzir Mundul*, 25 W. R. Cr. 25, MACPHERSON and MORRIS, JJ., laid it down as a rule, that the verdict of a jury "should not be interfered with except when there has been a gross and unmistakable miscarriage of justice" (p. 27). See also *Queen* v. *Ram Churn Ghose*, 20 W. R. 33: *Queen* v. *Sham Bajdee*, 20 W. R. 73: *Queen* v. *Hurro Manjhee*, 21 W. R. Cr. 4: (S. C.) 14 B. L. R. Appx. 2: *Queen* v. *Nobin Chunder Banerjee*, 20 W. R. Cr. 70: *Queen* v. *Khanderao Bajiraw*, I. L. R. 1 Bom. 10: *Emp.* v. *Behari Lall Bose*, 6 C. L. R. 431: *Emp.* v. *Mahaddi*, 6 C. L. R. 349. See further notes to s. 307, *infra*. In the case of *Emp.* v. *Mukhun Kumar*, 1 C. L. R. 275, it was held, *per* GARTH, C. J., and PRINSEP, J. (MARKBY, J., *contra*), that the rule laid down in *Queen* v. *Wuzir Mundul*, 25 W. R. Cr. Rul. 25 went too far; by PRINSEP, J. (MARKBY, J., *contra*), that the law did not prevent a Sessions Judge from asking a jury regarding the grounds of their verdict, and that such a course was desirable for the ends of justice.

But, it seems that it is only when it is necessary in order to ascertain what the verdict of the jury really is, that the Judge is justified in putting questions to the jury. Unless a necessity of this kind truly exists, the questions are not justified in law. No doubt the Legislature thought that it would be very dangerous to give the Sessions Court the power of cross-examining the jury after they had delivered their final verdict with a view to show that the conclusions at which they had arrived were not logical or were inconsistent, or in order to provide materials upon which the Judge

might be enabled afterwards to dispute the finality of the verdict. But where it appeared from the answers which the foreman returned upon being asked to give the verdict of the jury on the first charge that there was at the time some lurking uncertainty in the minds of the jury themselves with regard to their verdict, and this uncertainty made itself apparent to the Judge, he was held to have acted rightly in putting questions to them with a view of ascertaining what their verdict really was.—*Queen* v. *Sustiram Mundal*, 21 W. R. Cr. 1, *per* PHEAR, J., see *Reg.* v. *Sheikh Meajan*, 20 W. R. Cr. 60, *per* COUCH, C. J.

In the case of *Emp.* v. *Dhunum Kazee*, I. L. R. 9 Cal. 53 : (S. C.) 11 C. L. R. 169, the jury returned a simple verdict of "not guilty." NORRIS, J., said : "In this case the jury had returned a plain simple verdict of 'not guilty ;' it may have been erroneous, but it certainly was not ambiguous, and the duty of the Judge was to receive it and record it without asking any question about it."—p. 61. See cases cited by NORRIS, J., and *Emp.* v. *Dada Ana*, I. L. R. 15 Bom. 452, and the cases there cited and discussed.

In a trial upon charges of culpable homicide not amounting to murder under s. 304, and voluntarily causing grievous hurt under s. 325 of the Indian Penal Code, the Sessions Judge, in summing up, clearly contemplated a conviction on the first charge, but the jury, after a short retirement, stated that they were unanimous for an acquittal, and were divided on the other charge. The Judge thereupon inquired what the majority was, and on being informed that it was 3 to 2, asked what the verdict of the majority was. The answer was "guilty," and the Judge at once accepted the verdict. The High Court held on appeal that it was not intended under this section that a Judge, on ascertaining that a jury was not unanimous, should make inquiries to learn the nature of the majority and its opinion, so that he should have an opportunity of accepting or refusing that opinion as a verdict according as it coincided with his own opinion or not.—*Hurry Churn Chuckerbutty* v. *Emp.*, 13 C. L. R. 358 : (S. C.) I. L. R. 10 Cal. 140.

See *Reg.* v. *Hari Prasad Gungooly*, 8 B. L. R. 557.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

In the case of *The Queen* v. *Vodden*, Dear's C. C. 229, one of the jurors delivered a verdict, which was entered as not guilty. The prisoner was discharged out of the dock. Immediately he was discharged, and before the jury had left the box, others of the jury interfered and said the verdict was guilty. The prisoner was brought back to the dock, and the jury were again asked for their verdict. They all answered guilty, and this verdict was recorded. It was held that the mistake had been properly corrected.

Verdict in High Court when to prevail.

305. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

It is only when the jury is not unanimous that a Sessions Court may require it to retire for further consideration. When a verdict is unanimous, it must be received by the Judge unless contrary to law. Where a Judge dissents from an unanimous finding of a jury given in accordance with law, the only procedure open to him to follow is that laid down in s. 307.—See *Emp.* v. *Mahuddi*, I. L. R. 5 Cal. 871 : (S. C.) 6 C. L. R. 349.

See s. 310, *infra*, in cases where the charge is of an offence committed after a previous conviction.

Verdict in Court of Session when to prevail.

306. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Although this section leaves the discretion of the Judge absolutely uncontrolled, the Court ought not to interfere with the unanimous verdict of a jury unless the verdict be palpably and perversely wrong.—*Emp.* v. *Behari Lall Bose*, 6 C. L. R. 431 : *Emp.* v. *Mahuddi*, 6 C. L. R. 349 : (S. C.) I. L. R. 5 Cal. 871. See notes to s. 303, *supra*.

A Court is bound to pass some sentence if it records a verdict of guilty, though the sentence may be only nominal (*Mad. H. C. Pro.*, 12*th August* 1869 : *Weir*, p. 37); but a Judge is not warranted

in passing a merely nominal sentence, because he cannot concur in a jury's verdict of guilty. In doing so, he would usurp the functions of a jury. He is bound to pass a sentence adequate to the offence found by the jury to have been committed.—*Mad H. C. Pro., 8th November* 1866; *Weir*, p. 37. If he dissents from the finding of the jury, he must follow the procedure laid down by the next section.—*Emp.* v. *Mahaddi*, I. L. R. 5 Cal. 871: (S.C.) 6 C. L. R. 349.

See s. 310, *infra*, in cases where the charge is of an offence committed after a previous conviction.

Procedure where Sessions Judge disagrees with verdict.

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it: and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

Act X of 1872, s. 263, paras. 5 and 6; Act XI of 1874, s. 21

See the recommendations with regard to this section of the Jury Commission set out in the notes to s. 269, *supra*.

Paragraph 6 of s. 263 of Act X of 1872 provided that "the High Court shall deal with the case so submitted as it would deal with an appeal, but it may acquit or convict the accused person on the facts as well as law without reference to the particular charges as to which the Court of Session may have disagreed with the verdict, and if it convict him, shall pass such sentence as might have been passed by the Court of Session." The alteration made in this paragraph seems to have been suggested by the decision of the High Court in the case of *Emp.* v. *Harai Mirdha*, I. L. R. 3 Cal. 189, where MARKBY, J., said: "Whatever may be the exact position of this Court in dealing with a reference of this kind under s. 263, as to which we express no opinion, we feel no doubt whatever that this Court has a right to convict a prisoner of any offence which the jury could have convicted him of upon the charge framed and placed before them. Upon the charges framed and placed before the jury in this case, the jury could have convicted these prisoners (who were charged under ss. 302, 149 and 326 and 149 of the Penal Code) of an offence under s. 143. We, therefore, undoubtedly possess that power ourselves."

Where a Judge dissents from the unanimous finding of a jury given in accordance with law, the only procedure open to him is to follow that laid down by this section. An unanimous verdict must be received by the Judge, unless contrary to law.—*Emp.* v. *Mahaddi*, I. L. R. 5 Cal. 871: (S. C.) 6 C. L. R. 349: *Hurri Churn Chuckerbutty* v. *Emp.*, 13 C. L. R. 358, see p. 363: (S. C.) I. L. R. 10 Cal. 140. See *Emp.* v. *Chinna Tevan*, I. L. R. 14 Mad. 36. So, in a trial by a jury before a Court of Session upon charges some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority, having returned a verdict of not guilty on all the charges, the Judge, who disagreed with the verdict, treated the trial of the charges which were triable with the aid of assessors as if they had been so tried, and convicted the accused persons. On appeal it was held, that it was the duty of the Judge to have accepted the verdict as one of acquittal, and then to have passed orders in accordance with s. 263 of Act X of 1872.—*In re Bhootnath Dey, Appella nt*, 4 C. L. R. 405.

Where a Sessions Judge has approved of a verdict on certain charges and finally acquitted and discharged the prisoner as to those charges, the High Court cannot, under this section, convict on those very charges. The section, it was held, contemplates only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case.—*Reg.* v. *Udya Changa*, 20 W. R. Cr. 73.

The disagreement referred to in this section must be such a complete dissent as to lead the Judge to consider it necessary, for the ends of justice, to submit the case to the High Court.—*Imperatrix* v. *Bhavani bin Pandují*, I. L. R. 2 Bom. 525.

The High Court in exercising its powers under this section is bound to act upon its own view of the evidence, the whole case being opened up on a reference by a Sessions Judge; but in so acting the opinion of the Sessions Judge no less than the verdict of the jury is entitled to its proper weight. —*Emp.* v. *Ituari*, I. L. R. 15 Cal. 269: *Emp.* v. *Dada Ana*, I. L. R. 15 Bom. 452: *Emp.* v. *McCarthy*, I. L. R. 9 All. 420. Its powers are not limited to interference on questions of law.—*Emp.* v. *McCarthy*, I. L. R. 9 All. 420. See *Emp.* v. *Guruvadu*, I. L. R. 13 Mad. 343.

When the jury is not unanimous in their finding, and the Judge dissents from the opinions expressed by them, the High Court is competent, on the case being referred under this section, to find the prisoner guilty notwithstanding an acquittal by the majority of the jury.—*Emp.* v. *Sahue Lote*, I. L. R. 3 Cal. 623. In such a case it is the duty of the Judge, in sending up the matter to the High Court, to state the offence which has, in his opinion, been committed.—*Ibid.*; see also *In re Tituckdharee*, 2 C. L. R. 1: *Queen* v. *Nobin Chunder Banerjee*, 20 W. R. Cr. 70. On the other hand, the High Court can acquit the prisoner, if it so think fit, on the facts, notwithstanding that the jury has found the prisoner guilty (*Queen* v. *Koonjo Lelh*, 11 B. L. R. 14: (S. C.) 20 W. R. Cr. 1: *Queen* v. *Sidhan Sircar*, *ib.* 16); but the Court should exercise the powers vested in it only in cases in which it finds the verdict of the jury clearly and undoubtedly wrong.—*Queen* v. *Sham Bagdi*, 13 B. L. R. Appx. 1: *Queen* v. *Doorjolhun Shamonto*, 19 W. R. Cr. 45: *Queen* v. *Nobin Chunder Banerjee*, 20 W. R. Cr. 70: *Queen* v. *Mutsamut Iwarya*, 14 B. L. R. Appx. 1: *Queen* v. *Hurro Manji*, 14 B. L. R. Appx. 2: (S. C.) 21 W. R. Cr. 4: *Emp.* v. *Harai Mirdha*, I. L. R. 3 Cal. 180. In the case of *Queen* v. *Wuzir Mundul*, 25 W. R. Cr. 25, the Court (MACPHERSON and MORRIS, JJ.) said, that "the verdict of a jury should not be interfered with except when there has been a gross and unmistakable miscarriage of justice." In the case of *The Emp.* v. *Mukhun Kumar*, 1 C. L. R. 283, GARTH, C. J., and PRINSEP, J. (MARKBY, J., dissenting), considered that this ruling went too far. GARTH, C. J., saying—"It appears to me that by the section the Legislature intended to vest in the High Court a very large discretion, and that it would be improper for us, if not impossible, to lay down any fixed rule by which that discretion should be controlled. The verdict of a jury, who are the legally constituted judges of facts, and have the advantage of seeing the case tried, and of hearing the witnesses examined, ought always, in my opinion, to command its proper weight; and the more unanimous a verdict may be, and the less likely to have been induced or influenced by prejudice or error, the more entitled it should be to our respect and consideration. But there may be many occasions where, as it seems to me, little or no weight should be attached to their verdict; as for instance, where, out of a jury of five, three are of one way of thinking and two of another, and the presiding Judge agrees with the minority; or where it is manifest, from the verdict of the jury or otherwise, that their minds have been influenced by prejudice which has prevented them from forming a correct judgment."

Where there were reasons sufficient to warrant a jury in disbelieving the witnesses, the High Court refused to interfere on a reference under this section, as it was not shown that the verdict of the jury was certainly unreasonable and perverse.—*In the matter of Hurres Narain Mookerjee*, 2 C. L. R. 518.

In the case of *In re Tituckdharee*, 2 C. L. R. 1, where four out of five jurors acquitted the prisoner on a charge of attempt to commit rape, and the Sessions Judge, disagreeing with the verdict, referred the case to the High Court, that Court found that the evidence for the prosecution was fully worthy of belief and sentenced the prisoner.

A Sessions Judge ought to record distinctly whether or not he agrees with the verdict of the jury.—*Queen* v. *Chand Bagdee*, 7 W. R. Cr. 6.

As stated by GARTH, C.J., a very large discretionary power is vested in the High Court by this section, and no fixed rules can be laid down for the exercise of that discretion in every instance, and the decision in each instance must depend upon its own peculiar circumstances.—*Emp.* v. *Makhun Kumar*, 1 C. L. R. 275. The duty of both Judge and jury is, in fact, cast upon the High Court.—*Reg.* v. *Khanderav Bajirav*, I. L. R. 1 Bom. 10. See *Emp.* v. *Dada Ana*, I. L. R. 15 Bom. 452: *Emp.* v. *Mania Dayal*, I. L. R. 10 Bom. 497. In the first case WEST, J., speaking of the difference of the positions of the High Court and the Courts in England, said: "Notwithstanding this difference and the more onerous duties devolving in consequence on the High Courts in India, we still desire to be guided, as far as may be, by the analogies of the English law. It is a well-recognized principle that the Courts of England will not set aside the verdict of a jury unless it be perverse and patently wrong, or may have been induced by an error of the Judge. We adhere generally to this principle." SARGENT, C. J., expressed a similar opinion in *Emp.* v. *Dada Ana*, I. L. R. 15 Bom. 452. In another case it was stated to be the rule of the High Court in Calcutta, not to interfere with the finding of a jury, unless their verdict is shown to be manifestly erroneous.—*Emp.* v. *Jacquiel*, I. L. R. 11 Cal. 85. See *Emp.* v. *Dhunun Kazee*, I. L. R. 9 Cal. 53: (S. C.) 13 C. L. R. 169.

Where the Court is asked to set aside a verdict, because it is against the weight of evidence the question is not whether the Judge who tried the case was or was not satisfied with the verdict, or whether he would have come to the same conclusion as the jury, but whether the verdict was such as reasonable men ought to have come to.—*Emp.* v. *Dhunun Kazee*, L. R. 9 Cal. 53: (S. C.) 13 C. L. R. 169. See *Solomon* v. *Bitton*, L. R. 8 Q. B. D. 176.

The words "shall deal with the case so submitted as with an appeal," in s. 263 of Act X of 1872, which are similar to the words used in the last paragraph of this section, were construed by PHEAR, J., in the case of *Queen* v. *Koonjo Lelh*, 11 B. L. R. 19, as simply directing the procedure to be followed, *e.g.*, as regards the notices to be served, and so on. The Court, therefore, might send for additional evidence and deal with the case generally as provided in Chap. XXXI with regard to appeals. The result of this construction is, that the prisoner is in a better position with regard to an appeal, if that appeal be made through the intervention of the Judge under this section than if he had preferred it himself, because s. 418, *infra*, says that, if the conviction was in a trial by jury, the appeal by the person convicted shall be admissible on a matter of law only.

See also notes to s. 303.

Instructions as to References to High Court, when Sessions Judge disagrees with Jury.—In cases in which the Sessions Judge has disagreed with the verdict of the jury, no delay should be permitted to occur in the submission of the records with the Sessions Judge's letter of reference. It is open to the Government pleader, and to the pleader for the accused, to make notes of the evidence as the case proceeds. If, after the trial is concluded, copies of any part of the proceedings are

required, it will be necessary that they should be made, on application, in the High Court, after receipt of the record.—*Cal. H. C. C. O., No. 2 of 23rd March* 1878; *Wilkins*, p. 115.

Where upon a reference under this section to a Bench of two Judges, the Judges disagree, the High Court at Bombay, following the course adopted by the Calcutta High Court, under the corresponding section of the former Code (*Reg.* v. *Mukhan*, 1 C. L. R. 275), laid the case before a third Judge instead of disposing of the case in the manner provided by s. 36 of the amended Letters Patent, *i.e.*, by the opinion of the senior Judge—being of opinion that s. 307, with s. 439, applies s. 420, as to appeals, to a case of reference.—*Emp.* v. *Dada Ana*, I. L. R. 15 Bom. 452.

G.—Re-trial of Accused after Discharge of Jury.

Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of Trial in Cases tried with Assessors.

Delivery of opinions of assessors.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Judgment.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

Act X of 1872, s. 255, para. I, ss. 261, 262.

The proviso as to summing up is new, and gets rid of a difficulty which was raised in the case of *Reg.* v. *Ameeroddeen*, 15 W. R. Cr. 25: (S. C.) 7 B. L. R. 63.

The power of summing up the evidence is intended to be exercised in long or intricate cases, and the Sessions Judge should confine himself to summing up the evidence and should not obtrude on the assessors his opinion of the worthlessness or otherwise of any portion of the evidence.—*Shadulla Howladar* v. *Emp.*, I. L. R. 9 Cal. 875: (S. C.) 12 C. L. R. 506.

The section does not require that the summing up or heads of the summing up should be recorded; but in the case of *Shadulla Howladar* v. *Emp.*, I. L. R. 9 Cal. 875: (S. C.) 12 C. L. R. 506, where the summing up was recorded by the pleader for the prosecutor and accepted by the Judge, PRINSEP, J., said: "We think that such a course should not have been taken by the Judge, and that if he was incapable of recording the heads of his summing up to the assessors, he should have availed himself of the services of some Court officials, or directed it to be done by some independent person." It must be borne in mind that, under s. 367, *post*, the heads of charge to jury must be recorded by the Sessions Judge.

The judgment need not be pronounced at once. Section 366, *infra*, provides that, in every trial in any Court of original jurisdiction, judgment shall be pronounced in open Court either immediately or at some subsequent time, of which due notice shall be given to the parties or their pleaders.

Where, after the assessors had given their opinions, the Judge left the district without recording his finding or his judgment, and his successor, after considering the evidence which had been taken at the trial, convicted and passed sentence on the prisoners, the conviction and sentence were set aside and the prisoners ordered to be re-tried.—*Queen* v. *Gopi Noshyo*, 21 W. R. Cr. 47.

The intention of the Legislature was, where a prisoner is tried on two or more charges, that the assessors should give a definite opinion whether the prisoner is guilty of any, and, if so, of which of the charges preferred against him, and that the Judge, in delivering his judgment, should give it with advertence to the opinion of the assessors.—*Queen* v. *Mutam Mal*, 22 W. R. Cr. 34.

In *Reg.* v. *Kala Karsan*, 6 Bom. H. C. R. Cr. 55, it was held, that the Judge's omission in a trial conducted with the aid of assessors to state the ground of his decision was not an irregularity which invalidated the conviction. But see *Queen* v. *Shumshere Beg*, 9 W. R. Cr. Rul. 51: *Bhuttoan* v. *Doyal Gope*, 10 *ib.* 7.

Opinion of Assessors how to be Recorded.—The record of the opinion of each assessor should appear at the commencement of the judgment of the Sessions Judge. It is not, in the Court's opinion, sufficient that this record should contain a mere verdict of guilty or not guilty, or proven or not proven; what the Court requires is not only the result arrived at by each assessor sitting on a sessions trial, but, if possible, the reasons by which each assessor arrived at that result,—that is,

the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions.—*Cal. H. C. C. O., No.* 4 *of* 23*rd June* 1865; *Wilkins*, p. 115. See *Queen* v. *Mussamat Mina Nuggerbhatin*, 3 W. R. Cr. 6.

The Sessions Judge should conform strictly to the terms of the section and require each assessor to state his opinion orally (*Shadulla Howladar* v. *Emp.*, I. L. R. 9 Cal. 875: (S. C.) 12 C. L. R. 500); and the grounds of their opinions should be distinctly recorded.—*Queen* v. *Mussamut Mina Nuggerbhatin*, 3 W. R. Cr. 6. Their statements should be taken separately. It is irregular to take a joint statement.—*Hasan Khan*, Punj. Rec., 1887, p. 95.

A Sessions Judge has no power to take further evidence after the opinions of the assessors have been given, as the trial is at an end, except for the purpose of giving judgment.—*Hasan*, Punj. Rec., 1888, p. 59.

See s. 310, *infra*, as to cases in which the charge is of an offence committed after a previous conviction.

I.—Procedure in case of previous Conviction.

Procedure in case of previous conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309 shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

[Notwithstanding anything in this section evidence of the previous conviction may be given at the trial for the subsequent offence if the fact of the previous conviction is relevant under the Indian Evidence Act, 1872.—*Added by Act III of* 1891, *s.* 9.]

The object of this section was to prevent the jury or assessors from being biased against the accused by the knowledge that he is an old offender. The last paragraph was added by Act III of 1891, s. 9.

It has now been held that, in trials before a jury or with the aid of assessors, the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence (*Kristo Behari Das* v. *Emp.*, 12 C. L. R. 555, *per* CUNNINGHAM and MACLEAN, JJ.); but in the case of *Bepin Behary Shaw* v. *Emp.*, 13 C. L. R. 110, where a Sessions Judge, in a trial by jury, called upon the accused to answer at the same time a charge of theft and also a charge of having been previously convicted, the High Court refused to interfere, as it did not appear that there had been a failure of justice caused by the irregularity.

In *Emp.* v. *Kartick Chunder Das*, I. L. R. 14 Cal. 721, it was held by the Full Bench in 1887 that under s. 54 of the Evidence Act a previous conviction is in all cases admissible against an accused person.

As to proof of previous convictions, see s. 511, *post*.

It is important now to note with reference to the additions made to this section the alterations in the Law of Evidence as to previous convictions made by Act III of 1891. Sections 14 and 43 and 54 of the Evidence Act as amended, so far as they deal with previous convictions, are as follows:—

"14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant."

"*Explanation* 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question."

"*Explanation* 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact."

Illustrations.

(*a*) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

"43. Judgments, orders or decrees other than those mentioned in sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act."

(*b*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(*c*) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

"54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant."

"*Explanation* 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue."

"*Explanation* 2.—A previous conviction is relevant as evidence of bad character."

J.—List of Jurors for High Court, and Summoning Jurors for that Court.

311. *In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this Chapter.*

Jurors' book.

Exemption of special jurors.

Those persons whose names are entered in the jurors' book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this Chapter during the year for which the said list has been prepared.

This Section has been repealed by Act XII of 1891, Sched. I, Part I.

312. The names of not more than *four hundred* [Act V of 1887] persons shall at any one time be entered in the special jurors' list.

Number of special jurors

Act X of 1875, s. 40.

For rules as to list of jurors in the High Court at Calcutta, see *Belchambers's Rules and Orders*, pp. 256—267.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors

(*a*) a list of all persons liable to serve as common jurors ; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character, and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor-General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

District Locomotive Superintendents and Assistant Locomotive Superintendents on the East Indian Railway are exempted from liability to serve as jurors or assessors in criminal trials in the

N.-W. Provinces.—*N.-W. P. Gazette*, 1875, p. 1076. And the following officials of the Oudh and Rohilkund Railway are also exempted:—Engineers in charge of the open line; engineering inspectors employed on the open line: locomotive foremen and drivers in charge at changing stations; drivers of pilot engines; and station-masters.—*N.-W. P. Gazette*, 1875, p. 171.

The following persons are exempted from serving on juries in the mofussil in the Madras Presidency:—The Agent, the Chief Accountant, and the Cash-keeper of every branch of the Madras Bank (*Madras Notification*, 19*th Feby.* 1874; *Weir*, p. 76); all officers and subordinates of the Public Works Department while actually in charge of public works ranges (*Madras Notification*, 23*rd March* 1876; *Weir*, p. 76); and Railway Engineers in charge of sections of railways open for public traffic (*Madras Notification*, 28*th July* 1876; *Weir*, p. 76).

Publication of lists preliminary and revised.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Number of jurors to be summoned in Presidency-town.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

Summoning jurors outside the Presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary, to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

See note to s. 320, *infra*.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of contempt and be liable by order of the Judge to such fine as he thinks fit; and in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

See s. 332, *post*, and s. 295, *supra*

K.—List of Jurors and Assessors for Court of Session, and Summoning Jurors and Assessors for that Court.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside.

Liability to serve as jurors or assessors.

320. The following persons are exempt from liability to serve as jurors or assessors, namely :—

Exemptions.

(*a*) Officers in civil employ superior in rank to a District Magistrate ;

(*b*) Judges ;

(*c*) Commissioners and Collectors of Revenue or Customs ;

(*d*) Persons engaged in the Preventive Service in the Customs Department ;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;

(*f*) Persons actually officiating as priests or ministers of their respective religions ;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors ;

(*h*) Surgeons and others who openly and constantly practice the medical profession ;

(*i*) Persons employed in the Post-office and Telegraph Departments ;

(*j*) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641 ;

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

In the Punjab, under s. 30 of Act IV of 1866, military men are not exempt, when summoned by the Chief Court, from serving as jurors, unless their Commanding Officer desires to have them excused on the ground of urgent military duty, or for any other special military reason. See s. 317, *supra*.

District Locomotive Superintendents and Assistant Locomotive Superintendents on the East Indian Railway are exempted from liability to serve as jurors or assessors in criminal trials in the N.-W. Provinces.—*N.-W. P. Gazette*, 1875, p. 1076. And the following officials of the Oudh and Rohilkund Railway are also exempted : Engineers in charge of the open line; engineering inspectors employed on the open line; locomotive foremen and drivers in charge at changing stations; drivers of pilot engines; and station-masters.—*N.-W. P. Gazette*, 1875, p. 171.

The following persons are exempted from serving on juries in the mofussil in the Madras Presidency :—The Agent, the Chief Accountant, and the Cash-keeper of every branch of the Madras Bank (*Madras Notification*, 19*th Feby.* 1874; *Weir*, p. 70); all officers and subordinates of the Public Works Department while actually in charge of public works ranges (*Madras Notification*, 23*rd March* 1876; *Weir*, p. 76); and Railway Engineers in charge of sections of railways open for public traffic (*Madras Notification*, 28*th July* 1876; *Weir*, p. 70).

As to grounds of objection to persons summoned as jurors, see s. 278, *supra*.
See ss. 329, 462, *infra*.

List of jurors and assessors.

321. The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode, and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

Compare s. 400 of Act X of 1872. That section provided that the list should be of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government should think fit to direct. Under this section, it will be seen that no such limits are prescribed, and consequently all persons liable to serve as jurors in the district where the sessions are held are liable to be summoned. See s. 319, *supra*.

The following rules are in force in Bombay:—

It has been brought to the notice of Government that sufficient care is not always taken in the preparation and revision of these lists; many persons, such as officers in the service of Government, pensioners, &c., who would make the best class of assessors, being omitted, while, on the other hand, persons of tainted reputation, and otherwise clearly unfit, are sometimes included.

Government consider it most important that the duty of preparing and revising these lists should be properly performed, with a view to obtaining the services, as assessors, of a sufficient number of respectable and really intelligent men of all classes, and wish it to be understood that this duty should be performed by the Collectors themselves with the aid of their assistants, and on no account delegated to uninstructed and irresponsible subordinates.

It is also very desirable to improve the position of assessors in public estimation, and to make the duty as little irksome as possible to individuals. No assessor should, therefore, be summoned too frequently; he should be summoned formally and regularly, and be treated with consideration and respect during his attendance at the station. And Collectors should be careful to represent and practically to regard the duty of an assessor as one of responsibility and trust, and to make the assessors feel that their co-operation in the administration of justice is sought for as a means of conferring a benefit upon their countrymen, and not merely to assist the Judges in their labours.—*Bom. H. C. Cir.* 48.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

325. The list so prepared and revised shall be again revised once in every year.

Annual revision of list.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

District Magistrate to summon jurors and assessors.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them ; and the names so drawn shall be specified in the said letter.

For form of precept to District Magistrate to summon jurors and assessors, see Sched. V, No. 32.

It is irregular to delegate the duty of selecting assessors to the Magistrate. His duty is purely ministerial. He has simply to issue a summons to each person specified in the precept of the Sessions Judge, requiring him to attend as an assessor at the time and place specified in the summons. The assessors are not to be selected several days before the trial, nor are they to be chosen by lot as are jurors ; but they are to be chosen as the Judge thinks fit, as provided in s. 239 (284), at the commencement of the trial, from the persons summoned to act.—*Smyth*, p. 133.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the periods specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Power to summon another set of jurors or assessors.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Form and service of summons.

For form of summons to juror or assessor, see Sched. V, No. 33.

329. Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Government or Railway servant may be excused.

Certain servants of Railway Companies have been exempted by the Local Government. See note to s. 320, *supra*.

330. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Court may excuse attendance of juror or assessor.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

List of jurors and assessors attending.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

332. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may by order of the Court of Session be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

No appeal lies from an order fining an assessor or juror for non-attendance; see Chap. XXXI. But if a juror or assessor has been fined and subsequently gives good ground, such as illness, for his non-attendance, the Judge should reconsider his order.—*In re Gour Surun Dass*, 8 W. R. Cr. 83. See ss. 295 and 318, *supra*.

L.—Special Provisions for High Courts.

Power of Advocate-General to stay prosecution.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Act X of 1875, s. 146. It is to be noted that s. 146 of Act X of 1875, so far as it relates to informations, has not been repealed.—*Sched. I (b), post.* See notes to s. 194, *supra*, where ss. 144 and 146, the two unrepealed sections of Act X of 1875, are set out. The proviso in the last sentence, that, unless the presiding Judge otherwise directs, the discharge shall not amount to an acquittal, is new.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

But it may, from time to time, in the case of the High Court at Fort William, with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Place of trial of European British subjects.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named.

Compare the first part of s. 27 of Act X of 1875.

Under the Lower Burma Courts Act XI of 1889 the Recorder of Rangoon shall ordinarily hold his Court at Rangoon, but the Local Government may direct him on any particular occasion to hold his Court at any other place in Lower Burma for the trial of any civil case transferred to him or at any other place in Lower Burma or Upper Burma for the trial of any criminal case in which a European British subject is concerned,—s. 37 (3), and such a direction shall take effect notwithstanding anything in this section (336) of the Criminal Procedure Code.—S. 37 (4).

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Tender of pardon to accomplice.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first-class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

In Upper Burma (except the Shan States) a District Magistrate tendering a pardon under the section may, notwithstanding anything in this section, try the case himself.—Reg. V of 1892, Sched. (VIII).

If any Magistrate, not empowered by law, erroneously in good faith tenders a pardon under this section, his proceedings shall not be set aside merely on the ground of his not being so empowered.—*S.* 529 (*g*), *infra*.

Although s. 337 does not in terms cover a case where a Magistrate holding a preliminary inquiry for committal against several persons tenders a conditional pardon to one of them examines him as a witness, and subsequently discharges all the accused for want of a *primâ facie* case against them the words "every person accepting a tender under this section shall be examined as a witness in the case" mean that for all purposes (subject to failure to satisfy the conditions of the pardon as provided for by s. 339), such a person ceases to be triable for the offence or offences under inquiry, or (with reference to s. 339) for "any other offence of which he appears to have been guilty in connection with the same matter," while making "a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences" under inquiry. The last words quoted refer to the importance, when a pardon is tendered, of encouraging the approver to give the fullest details, so that points in his evidence may be found which may be capable of corroboration.—*Emp.* v. *Ganga Charan*, I. L. R. 11 All. 79, *per* STRAIGHT, J.

The question of how far the pardon protects an approver and what portion of it should not protect him ought not to be treated in a narrow spirit.—*Ibid.*

The Court should, when it tenders a pardon to a prisoner, explain to him the conditions which accompany the tender. It is for the prisoner then to accept or refuse the tender. If he refuses, the tender will have been abortive, and the trial will proceed as if no such tender had been made; if he accepts, it is the duty of the Court to examine him as a witness in the case, under the rules applicable to the examination of witnesses; and then if, after having so examined him, the Court be of opinion that he has not complied with the conditions, the Court may then commit or order him to be committed for trial upon the charge in respect of which pardon was tendered.—*Queen* v. *Gogalao*, 12 W. R. Cr. 80: (S. C.) 4 B. L. R. App. 50.

It is not competent to a Magistrate to convert an accused person into a witness, except when a pardon has been lawfully granted, and therefore evidence given by such a person who had received a pardon in the case of an offence not exclusively triable by the Court of Session was held not to be relevant, that person not having been acquitted or discharged or convicted.—*Emp.* v. *Sadhee Rasal*, I. L. R. 10 Cal. 936: *Reg.* v. *Hanmanta*, I. L. R. 1 Bom. 610: *Reg.* v. *Ashruff Sheikh*, 6 W. R. Cr. 91: *Emp.* v. *Dala Jiva*, I. L. R. 10 Bom. 190. Statements made by an accused person in the course of such an examination are irrelevant, and if subsequently retracted should not be used against him or subject him to a prosecution for giving false evidence.—*Emp.* v. *Dala Jiva*, I. L. R. 10 Bom. 190: and *Emp.* v. *Asghar Ali*, I. L. R. 2 All. 260: see *Mohesh Chunder Kapali* v. *Mohesh Chunder Dass*, 10 C. L. R. 553.

As to the weight to be attached to the evidence of approvers, see note to s. 298, *ante*. Section 114, Ill. (b), of the Evidence Act, provides that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.—See *Emp.* v. *Chayan Dayaram*, I. L. R. 14 Bom. 331.

See s. 439, *infra*.

Accomplices.—Although, as a general rule, it is unsafe to convict an accused on the uncorroborated evidence of an accomplice a conviction founded upon such evidence of one or more accomplices alone is valid in law—Evidence Act, s. 133.—*Emp.* v. *Gobardhone*, I. L. R. 9 All. 528: *Reg.* v. *Ramasami Padayachi*, I. L. R. 1 Mad. 394: *Emp.* v. *Hurdeo Das*, Weekly Notes, 1884, p. 286: *Emp.* v. *Ram Saran*, I. L. R. 8 All. 306: *Emp.* v. *Ranji*, I. L. R. 10 Mad. 295: *Emp.* v. *Mayantal*, I. L. R. 14 Bom. 115. But the evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require.—*Elahee Buksh, Appellant*, 5 W. R. Cr. 80: see also *Queen* v. *Nawabjan*, 8 W. R. 19: *Queen* v. *Shumshere Reg.* 9 W. R. Cr. 51: *Queen* v. *Kali Churn Gangooly*, 7 W. R. Cr. 2: *Queen* v. *Mohima Chunder Dass*, 15 W. R. Cr. 37: Evidence Act, I of 1872, ss. 30, 114, Ill. (b), and 133: *Reg.* v. *Ramasami Padayachi*, I. L. R. 1 Mad. 394: and *Reg.* v. *Buthu Nanku*, I. L. R. 1 Bom. 475: *Emp.* v. *Arumuga*, I. L. R. 12 Mad. 196: *Emp.* v. *Buldeo*, I. L. R. 8 All. 509: *Emp.* v. *Kure*, Weekly Notes, 1886, p. 65: see *Reg.* v. *Mullins*, 3 Cox, C. C. 526.

A Judge may misdirect the jury as to what is corroboration of the testimony of an approver.—*Emp.* v. *Bepin Biswas*, I. L. R. 10 Cal. 970. As to what is legal corroboration, see that case and *Reg.* v. *Mulapabin Kapana*, 11 Bom. H. C. R. 196: *Reg.* v. *Buthu Nanku*, I. L. R. 1 Bom. 475: *Reg.* v. *Jaffer Ali*, 19 W. R. Cr. 57: *Reg.* v. *Noga*, 23 W. R. Cr. 24: and *Emp.* v. *Imdad Khan*, I. L. R. 8 All. 120, p. 137: *Emp.* v. *Chagan Dayaram*, I. L. R. 14 Bom. 331: *Emp.* v. *Dosa Jiva*, I. L. R. 10 Bom. 231: see *Emp.* v. *O'Hara*, I. L. R. 17 Cal. 642. The omission to caution a jury not to accept the uncorroborated testimony of an accomplice has been held to amount to a misdirection.—*Emp.* v. *Arumuga*, I. L. R. 12 Mad. 196.

In the case of *Queen* v. *Sadhu Mundul*, 21 W. R. Cr. 69, PHEAR, J., said:—"In the case of a trial by jury, it is the function of the jury to ascertain the facts upon the evidence before them, and for that purpose to be guided by the law which is applicable, and it is in all cases the duty of the Judge to point out to them that law. It was, therefore, in the present case, the duty of the Judge to lay before the jury substantially to the effect just set out, the principles relative to the reception of accomplices' testimony, which the Legislature sanctioned by the Indian Evidence Act; and we think the Judge was wrong in telling the jury that this case was one in which no caution or instruction from him was needed on this head. It is, in all cases where an accomplice's testimony is admitted, incumbent on the Judge to inform the jury of the results of the law bearing on this point substantially as we have endeavoured to explain it:" and s. 114, Ill. (b), of the Evidence Act, provides that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.

The rule in that section coincides with the rule observed in England that though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or Court credits the evidence, a conviction proceeding upon it is not illegal. Section 133 of the Evidence Act in unmistakable terms lays it down that a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to the section.—*Reg.* v. *Ramasami Padayachi*, I. L. R. 1 Mad. 394: and see *Reg.* v. *Buthu Nanku*, I. L. R. 1 Bom. 475.

In the case of *Joyudee Paramanick*, 7 C. L. R. 66, FIELD, J., expressed a grave doubt, whether the deposition of an approver taken before the committing Magistrate might be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. A similar doubt was expressed by the Court (PRINSEP and TOTTENHAM, JJ.) in the case of *Nanha Mulla* v. *Emp.*, 13 C. L. R. 226. The Allahabad High Court in the case of *Reg.* v. *Hardewar*, 5 All. H. C. R. 217, held that the evidence was not admissible.

No proceedings should be taken against a person to whom a pardon has been tendered for breach of the conditions, until after the completion of the trial for the principal offence.—*Emp.* v. *Sudra*, I. L. R. 14 All. 336: see *Emp.* v. *Rama Tevan*, I. L. R. 15 Mad. 352.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Power to direct tender of pardon.

A Sessions Judge is not competent before a trial to instruct a Magistrate to tender a pardon under this section.—*In re Nistarinee Dubia*, 7 W. R. Cr. 114.

A pardon may be tendered to a prisoner tried with others who has pleaded guilty (*Emp.* v. *Kallu*, I. L. R. 7 All. 160), though not to a person who has pleaded guilty and been convicted on his plea.—*Ibid. per* DUTHOIT, J.

If any Magistrate, not empowered by law, erroneously in good faith tenders a pardon under this section, his proceedings shall not be set aside merely on the ground of his not being so empowered. —*S.* 529 (*g*), *infra*. See s. 439, *infra*.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

Commitment of person to whom pardon has been tendered.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

See Act X of 1872, s. 349; Act X of 1875, s. 78; Act IV of 1877, s. 151. The person to whom the pardon has been tendered may now be tried, not only for the offence in respect of which the pardon was tendered, but for any other offence of which he appears to have been guilty in connection with the same matter. The last clause is new, and supersedes the decision in the case of *Queen* v. *Mullick Jeochoo*, 23 W. R. Cr. 12.

No limitation is fixed by this section, as by s. 349 of Act X of 1872, as to the time when a pardon may be withdrawn.—See *Nobin Chunder Banikya* v. *Emp.*, 10 C. L. R. 369: (S. C.) I. L. R. 8 Cal. 500.

When a prisoner to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered, the Sessions Judge, in exercising the power given by this section, ought not to try the prisoner along with the prisoners in whose case he has already given evidence.—*Queen* v. *Petumber Dhoobee*, 14 W. R. Cr. 10. He should wait until the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver.—*In re Joydee Paramanick*, 7 C. L. R. 66: *Emp.* v. *Sudra*, I. L. R. 14 All. 336. It is unfair, it was said, to put an approver whose conditional pardon has been cancelled on trial along with the other prisoners in the course of whose trial he has given evidence.—*Emp.* v. *Rama Tevan*, I. L. R. 15 Mad. 352.

In the case of *Joydee Paramanick*, 7 C. L. R. 66, FIELD, J., expressed a grave doubt, whether the deposition of an approver taken before the committing Magistrate might be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. A similar doubt was expressed by the Court (PRINSEP and TOTTENHAM, JJ.) in the case of *Nanha Malla* v. *Emp.*, 13 C. L. R. 326. The Allahabad High Court, in the case of *Reg.* v. *Hardswar*, 5 All. H. C. R. 217, held that the evidence was not admissible.—See s. 298, *supra*.

In the case of *Srinop* v. *Emp.*, 12 C. L. R. 226, where a pardon was withdrawn by the Sessions Judge before the hearing of the whole of the evidence, without proof that the statement made by the person pardoned was inconsistent, except on the most immaterial points, with previous statements made by him, or contradicted by the evidence, and before any evidence affecting his veracity had been given, it was held that the pardon had been improperly withdrawn.

The want of sanction required by this section is not a mere irregularity curable under s. 537, but is a fatal defect.—*Sharina* v. *Emp.*, Punj. Rec., 1884, p. 92.

A deposition given by a person to whom a conditional pardon had been tendered is not, after withdrawal of the pardon, admissible against him in a subsequent proceeding, or in the trial of himself with his accomplices, unless it is first proved that he was the person who was examined and gave the deposition.—*Emp.* v. *Durga Sonar*, I. L. R. 11 Cal. 580.

Where a pardon is legally tendered to an accused, and he then makes a statement on oath, which he retracts on a subsequent judicial proceeding, a proper sanction under s. 195, *supra*, for a prosecution for giving false evidence would be necessary.—*Emp.* v. *Dala Jiva*, I. L. R. 10 Bom. 190 : *In re Balaba* v. *Sitaram*, 11 Bom. H. C. R. 34. If the charge of giving false evidence were in respect of the deposition made under the conditional pardon, the sanction of the High Court would be also necessary.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Right of accused to be defended.

'Pleader,' used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding.—*S.* 4 (*n*). See the Legal Practitioners' Act, XVIII of 1879.

Under s. 440, no party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision : Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect s. 439, para. 2. (Compare Act X of 1872, s. 297, last paragraph). Under that section no order could be made to the prejudice of the accused unless he had had an opportunity of being heard either personally or by pleader in his own defence.—See *Reg.* v. *Devama*, I. L. R. 1 Bom. 64.

Sections 492—495 provide for the employment of prosecutors.

Schedule II, Art. 10, of the Court Fees Act (VII of 1870) provides that the fee upon a mukhtarnamah, when presented for the conduct of any one case to any Criminal Court other than a High Court, shall be annas eight.

The following rulings of the Madras High Court are important in that Presidency :—

Advocates, vakils, and attorneys-at-law of the High Court are entitled to practise in all Criminal Courts subject to the control of the High Court (*Mad. H. C. Pro.*, 31*st October* 1863 ; *Weir*, p. 25). Vakils of a Sessions Court are entitled to practise in all Courts subordinate to the Sessions Court (*Mad. H. C. Pro.*, 23*rd November* 1865 ; *Weir*, p. 25). No advocate or attorney or authorized pleader appearing in defence of an accused person is required to file a vakalutnamah.—*Mad. H. C. Pro.*, 23*rd November* 1874 ; *Weir*, p. 25. A pleader of a District Munsif's Court comes within the category of 'authorised pleaders,' and as such is not required to file a vakalutnamah.—*Mad. H. C. Pro.*, 28*th March* 1870 ; *Weir*, p. 25.

The High Court being precluded from hearing any other person than an advocate or vakil of the Court on behalf of a suitor not appearing in person, Judicial Officers in the provinces should refuse to authenticate a mukhtarnamah or other power given by a convicted person to a private agent for the purpose of appealing to the High Court.—*Mad. H. C. Pro.*, 13*th September* 1862 ; *Weir*, p. 25 ; but see *Mad. H. C. Pro.*, 27*th September* 1877 ; *Weir*, p. 3.

A general order excluding any particular class from appearing as pleaders is illegal.—*Mad. H. C. Pro.*, 14*th January* 1875 ; *Weir*, p. 26.

Advocates pleading in any lower Court in which the language of the Judge is English may address the Court in that language, the Judge making arrangements for the interpretation, if necessary, of such address to the pleader on the other side.—*Mad. H. C. Pro.*, 22*nd July* 1858 ; *Weir*, p. 26.

In Bengal, with the permission of the presiding Judge or Magistrate, any advocate or pleader may address the Court in English, when any one of the pleaders on the opposite side is acquainted with that language, or whenever the senior of such pleaders or his client consents to this being done.—*Cal. H. C. C. O. No.* 4 *of* 15*th March* 1869 ; *Wilkins*, p. 4.

In Bombay, it was held that an appellant has a right to appear and be heard by a mukhtar.—*Emp.* v. *Shivram Gundo*, I. L. R. 6 Bom. 15 : see *In re Subbap Aitala*, I. L. R. 1 Mad. 304.

As to Burma, see Act XI of 1889, Chap. VI.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial ; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings.

The provisions of this section do not apply to a person who is of unsound mind. They apply to persons who are unable to understand the proceedings from deafness or dumbness, or ignorance of the country or other similar cause. Where the inability to understand proceedings is due to unsoundness of mind the procedure in Chap. XXXIV should be followed.—*Emp.* v. *Husen*, I. L. R. 5 Bom. 202.

In the case of *The Queen* v. *Bowka Hari*, 22 W. R. Cr. 35, the prisoner was deaf and dumb, and unable to understand the proceedings against him or to plead to the charge. The Sessions Judge convicted the prisoner, and forwarded the proceedings to the High Court. PHEAR, J., said after quoting the provisions of s. 195 of Act X of 1872 : "The discretion thus vested in this Court is very wide indeed. And it would seem to be a right inference from the section, that although

the prisoner had not been able to understand the proceedings, and therefore those proceedings had not, according to the principles of the English Common Law, constituted a fair and proper trial, yet, under special circumstances, if this Court should think fit, it might treat them as amounting to a sufficient trial, and pass sentence upon the prisoner according to the facts which seemed to be established in the course of, and as the result of, those proceedings." The case was remanded in order that the prisoner might have a further opportunity of defending himself, and he was ultimately convicted; see the same case reported in a later stage, 22 W. R. Cr. 72. In the case of *Dwarka Nath Haldar* v. *Noder Chand Kamte*, 22 W. R. Cr. 35 which was followed in *Atu Ram* v. *Emp.*, Punj. Rec., 1885, p. 78, a prisoner, who had been deaf and dumb from his infancy, was charged with criminal misappropriation of property. The impression produced upon the mind of the Court by the evidence was, "that the prisoner is silly, and was probably attracted by the bright ornament which, with a sort of magpie instinct, he stole and hid," and the prisoner was admonished and discharged.

When a deaf or dumb person is placed on his trial, some means of communicating with him should be adopted (*Mad. H. C. Pro., 24th May* 1870; *Weir*, p. 42); and proceedings taken in conducting the trial without making any attempt to communicate with the accused are clearly wrong. —*Mad. H. C. Pro., 5th December* 1870; *Weir*, p. 42. No sentence can be passed under this section if the Magistrate is uncertain whether the accused has understood the proceedings against him.—*Mad. H. C. Pro., 18th November* 1875; *Weir*, p. 42. For the case of a deaf mute, see *Emp.* v. *Gahna*, Punj. Rec., 1889, p. 139.

When a Deputy Magistrate, who tried and convicted a prisoner, considered that he did not understand the proceedings and referred the case to the Magistrate, who considered that the accused did understand what he was charged with, it was held that the finding of the Magistrate must prevail.—*In re Doobri Hulwai*, 19 W. R. Cr. 37.

Before reporting the circumstances of the case to the High Court, this section requires the Court to proceed to the end of the inquiry or trial.—*Mad. H. C. Pro., 22nd April* 1873; *Weir*, p. 42.

Power to examine the accused.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answer as it thinks just.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

It is not the intention of the Legislature that an accused person should be called upon at any stage of a trial of a criminal case to make any statement on oath, or that he should be liable to punishment for giving false evidence in answers to questions under this section (342). So the Code does not require that a petition of appeal should be verified, and, a criminal appeal being a continuation of the case, the appellant has the same privileges as an accused, and cannot be punished for making a false statement in his petition.—*Emp.* v. *Subbayya*, I. L. R. 12 Mad. 451.

Examination of Accused.—See note to s. 254, *supra*. As to reading the examination of the accused before the Magistrate at the Sessions trial, see s. 287, *ante*.

Questions put by the Court must be strictly limited to the purpose described in the section, *viz.*, of "enabling the accused to explain any circumstances appearing in the evidence against him," that is, in the evidence already, at the time of putting the question, given at the trial.—*Emp.* v. *Hurgobind*, I. L. R. 14 All. 242: see *Emp.* v. *Hawthorne*, I. L. R. 13 All. 345.

It is not competent to the Court under this section to subject the accused to cross-examination.—*Hurry Churn Chuckerbutty* v. *Emp.*, 13 C. L. R. 358: (S.C.) I. L. R. 10 Cal. 140: *Emp.* v. *Hawthorne*, I. L. R. 13 All. 345. The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself; but only for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that those facts should not stand against him unexplained.—*In re Chintbash Ghose*, 1 C. L. R. 436: *Virabudra Gaud*, 1 Mad. H. C. R. 199: *Queen* v. *Bholanath Sein*, 25 W. R. 57: *Queen* v. *Shaik Bazu*, 8 W. R. (F. B.) 47: *Emp.* v. *Behari Lall Bose*, 6 C. L. R. 431: *In re Noor Bux Kazi*, I. L. R. 6 Cal. 279: (S. C.) 7 C. L. R. 385: *Pro.*, 1 Mad. H. C. R. 199; *Weir*,

p. 42: *Emp.* v. *Kamandu*, I. L. R. 10 Mad. 121. Until there is evidence recorded against the accused, a Magistrate is not justified in putting any question at all to the accused, since it is only for the purpose of enabling an accused person to explain circumstances appearing in the evidence against him that a question can ever be put.—*Emp.* v. *Viran*, I. L. R. 9 Mad. 224, pp. 228 9. In the case of *In re Hossin Buksh Sheikh*, I. L. R. 6 Cal. 96: (S. C.) 6 C. L. R. 527, PRINSEP, J. said: "In permitting a Sessions Judge to examine an accused person from time to time during a trial, the law does not contemplate that he should commence a trial with a strict examination of a prisoner, in the manner of the cross-examination of an adverse witness by counsel . . . . By exercising the power allowed by s. 250 (342), the Sessions Court is not to establish a court of inquisition, and to force a prisoner to convict himself by making some criminating admissions after a series of searching questions, the exact effect of which he may not readily comprehend. The real object is to enable a Judge to ascertain from time to time, from a prisoner, particularly if he is undefended, what explanation he may desire to offer regarding any fact stated by the witness, or, after the close of the case, how he can meet what the Judge may consider to be damnatory evidence against him. In one of these cases now before us, we observe that the Judge was engaged, during the whole of the first day, in examining the accused. In like manner, in the second case, he examined the accused at considerable length before the case for the prosecution was opened. Such proceedings appear to us to be an abuse of the power given under the law."

In the case of *Emp.* v. *Yakub Khan*, I. L. R. 5 All. 253, the Court (STUART, C. J., and STRAIGHT, J.) said, p. 256: "We think it well to point out, on reference to ss. 342 and 364 of the Code, that while it is not intended to empower Magistrates to cross-examine persons charged before them, they are, nevertheless, authorized to put any questions which appear necessary at any stage of an inquiry or trial, and particularly when all the witnesses for the prosecution have been examined, for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him. Such questions, with the answers, should be recorded in full, and, when completed, should be read over to the accused, who is to be permitted to explain or add to his answers, and such explanations or additions must be taken down. After this has been done, the examination must be signed at the foot by the accused and by the Magistrate, who should further certify that it was read over to the accused and signed by him after being taken in the presence and hearing of him (the Magistrate), and it is a full and true account of the statement made by the accused."

A confession recorded by a Magistrate having jurisdiction is to be treated as an examination under this section, notwithstanding that the prisoner or prisoners may have been brought before the Magistrate before the conclusion of the Police investigation.—*Emp.* v. *Anuntram Singh*, I. L. R. 5 Cal. 957, followed in the case of *Emp.* v. *Yakub Khan*, I. L. R. 5 All. 253.

The Court should not put questions to the prisoner during the trial with a view to supplement the evidence for the prosecution.—*Reg.* v. *Diaz*, 3 Bom. Cr. Cas. 51; or to convict him out of his own mouth.—*Emp.* v. *Kamandu*, I. L. R. 10 Mad. 121, pp. 123—125. It is a matter of discretion for the Magistrate himself to judge whether, during the inquiry before him, it is right and proper that the accused should be examined or not, and it is very undesirable that the accused should be examined, when the Magistrate is satisfied that the evidence adduced by the prosecution does not disclose any proper subject of criminal charge gainst him.—*In re Shama Sankar Biswas*, 1 B. L. R. S. N. xvi. In improper and illegal for a Magistrate before evidence has been taken for the prosecution to put questions to the accused in the nature of cross-examination, as such questions cannot be said to be put for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence.—*Emp.* v. *Hawthorne*, I. L. R. 13 All. 345.

Section 114 of the Evidence Act (I of 1872) provides: "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of the natural events, human conduct, and public and private business in relation to the facts of the particular case." Illustration (*h*) is as follows: "The Court may presume that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him." See s. 133 of the Evidence Act, and *Emp.* v. *Chagan Dayaram*, I. L. R. 14 Bom. 331.

Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences, none of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case, it was held that, as the tender of pardon was not warranted, he could not be legally examined on oath, and his evidence was inadmissible.—*Emp.* v. *Asghar Ali*, I. L. R. 2 All. 260, and see *Reg.* v. *Hanmanta*, I. L. R. 1 Bom. 610: see also *Mal Singh*, Punj. Rec., 1887, p. 85.

The statements made by an accused person at his trial are to be taken down *in extenso* precisely as made; and, if practicable, in the language in which they are made.—*Mad. H. C. Pro.*, 13*th May* 1867; *Weir*, p. 43.

As to examining one of two accused persons in the absence of his fellow-prisoner, see *Emp.* v. *Lakshman Bala*, I. L. R. 6 Bom. 124: *Emp.* v. *Chundra Nath Sirkar*, I. L. R. 7 Cal. 65: (S. C.) 8 C. L. R. 352: and *In re Chakowrie Lall*, 13 C. L. R. 275: see also note to s. 239, *supra*.

When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.—Evidence Act, s. 30. "Offence" as used in s. 30 of the Evidence Act includes the abetment of, or attempt, to commit the offence.—Act III of 1891, s. 4, amending s. 3 of the Evidence Act.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures

In reading this section, the provisions of the Evidence Act (I of 1872), ss. 24—29, should be borne in mind.

Section 24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority, and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Section 25. No confession made to a Police-officer shall be proved as against a person accused of any offence.

Section 26. No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. *Explanation.* In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George, or in Burma, or elsewhere unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.—*Added by Act III of* 1891.

Section 27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Section 28. If such a confession as is referred to in s. 24 is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

Section 29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

See the notes on these sections of the Evidence Act under s. 163, *supra*.

Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences, none of which was exclusively triable by the Court of Session, and such person was examined as a witness in the case, it was held that the tender of pardon to such person not having been warranted by s. 347 of Act X, 1872, he could not legally be examined on oath, and his evidence was inadmissible. It was also held that his statement was irrelevant and inadmissible as a confession with reference to s. 344 of Act X of 1872 and s. 24 of the Evidence Act.—*Emp.* v. *Asghar Ali*, I. L. R. 2 All. 260: See *Reg.* v. *Hanmanta*, I. L. R. 1 Bom. 610: *Emp.* v. *Sadhee Rasul*, I. L. R. 10 Cal. 936: *Emp.* v. *Dala Jiva*, I. L. R. 10 Bom. 190.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused, if in custody :

Power to postpone or adjourn proceedings.

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

This section authorizes a Magistrate, for reasonable cause, to remand an accused person to jail without examining any witnesses.—See *Manikam* v. *Queen*, I. L. R. 6 Mad. 63. In that case it was held, although evidence was available, that the Magistrate was justified, for reasons recorded by him, without taking sworn testimony, to remand the prisoner for five days and again for four days in order that further evidence might be produced, so that the inquiry when commenced might be continuous. See *Mohesh Chunder Banerjee*, 4 B. L. R. Appx. 1. In that case there was no evidence, and the prisoners were remanded only in the expectation that evidence might turn up.

Under this section the Magistrate, it was said, has power to postpone without limit (provided that the accused be not remanded for more than 15 days at a time) the commencement of the inquiry or trial for the purpose of obtaining further evidence which it appears likely may be obtained if time is given, or for other reasonable cause. If no such evidence is then forthcoming, and if it is not shown that any is likely to be obtained, he ought no longer to be detained in custody.—*Emp.* v. *Engadu*, I. L. R. 11 Mad. 98.

In the case of *Ponnusami Chetti* v. *Queen*, I. L. R. 6 Mad. 60, it was held, by TURNER, C.J., and KERNAN, J., that where an accused person is first brought before a Magistrate, and a remand is required by the prosecutor, it is ordinarily sufficient to show by the evidence of a Police-officer that the Police are in possession of information believed to be reliable that the accused has committed an offence; but when the accused is again brought up after remand, and a further remand is needed, some direct evidence of the guilt of the prisoner should be required to justify the Magistrate in refusing bail, and with each remand the necessity of production of evidence of guilt becomes stronger. An accused has the right to have the evidence against him recorded at as early a period as possible, and the fact that there is or may be a great body of evidence forthcoming against him is not a ground for detention for an inordinate period.—*Manikam* v. *Queen*, I. L. R. 6 Mad. 63. Where a Magistrate defers the examination of witnesses, adjourns the inquiry, and remands the prisoner, he is bound to express clearly on the record the reasonable cause for which such action became necessary or advisable.—*Per* KERNAN, J., *Manikam* v. *Queen*, I. L. R. 6 Mad. 63, pp. 67 68.

So, in another case it was laid down, that when a prisoner is once arrested under a warrant, he should be brought up promptly before the Magistrate; and the Magistrate has then no authority to further detain him in custody, or to remand him to prison, without some reason made manifest to him either in the shape of sworn testimony given before him, or in some other form which can be put upon the record, and which is sufficient to justify him in sending the prisoner to prison, there to be detained for a limited period before further examination—a period which is never in any case to exceed fifteen days.—*In re Abdool Kadir*, 11 B. L. R. Appx. 11.

See *Emp.* v. *Sagambar*, 12 C. L. R. 720.

In every case in which a commission is issued under s. 503 or s. 506, the inquiry, trial, or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.—*S.* 508, *post*.

Where a Magistrate had adjourned an inquiry for a cause not contemplated by s. 224 of Act XXV of 1861, the High Court, in exercising the powers of superintendence conferred by s. 15 of 24 and 25 Vict., c. 104, set aside the order of remand.—*In re Mathuranath Chuckerbutty*, 9 B. L. R. 354. In that case, COUCH, C. J., said:—"We have to consider what is the power conferred upon the Magistrate by s. 224. It is said that if, from the absence of a witness, or from any other reasonable cause, it shall become necessary or advisable to defer the examination of witnesses, it shall be lawful for the Magistrate to adjourn the inquiry. It appears to me, looking at the language of this section, that, if there is not a proper cause—a cause such as is described—a Magistrate has not power to adjourn the inquiry, and it is not lawful for him to do it. A Magistrate is not at liberty, arbitrarily, or for any reason which he may think sufficient, to adjourn the inquiry; it is only to be in the cases mentioned. And although an improper adjournment of the inquiry by a Magistrate—an adjournment on a ground which could not be said to show that it was either necessary or advisable—might scarcely be said to be an error in the decision upon a point of law, or to involve any question of law, and s. 404 of the Code of Criminal Procedure (Act XXV of 1861) might possibly not enable this Court to interfere, we have, by the 15th section of the Act under which this Court is established, a power of superintendence which enables us to deal with such a case. I think it enables us, where a Magistrate had adjourned an inquiry where it was not lawful for him to do so under s. 224, to set aside the order. It seems to me desirable that Magistrates should understand that the power conferred by s. 224 is a power which is only to be exercised in cases which come really within the terms of that section. It is not a power conferred upon them to be exercised in an arbitrary manner, and not according to rule, but a power which they ought to be careful in exercising."

Where the accused has not his witnesses in attendance and does not apply to the Magistrate to summon them, the omission of the Magistrate to require him to produce his witnesses does not prejudice the accused or amount to an error or defect calling for interference.—*Queen* v. *Totaram*, 11 W. R. Cr. 15.

It is not an irregularity to adjourn the trial for the purpose of allowing the accused to secure the attendance of his witnesses.—*In re Dinoo Roy*, 16 W. R. Cr. 21.

In Madras, copies of all orders of remand, together with the reasons for such orders, must be transmitted by the Subordinate Magistrate to the Divisional or District Magistrate, to whom he is immediately subordinate, within twenty-four hours from the date of the same.—*Mad. H. C. Rule embodied in M. G. O., 6th May* 1878; *No.* 944: *Mad. H. C. L., 7th April* 1879, *No.* 624: and *Mad. H. C. Pro., 8th September* 1879; *Weir*, p. 34.

Bail.—If the offence is bailable, and the accused is prepared to furnish such bail as appears to the Court reasonable, s. 496, *post*, directs that he *shall* be released on bail.

Section 497 provides for the case of non-bailable offences as follows:—"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. If it appears to such officer or Court at any stage of the investigation, inquiry, or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or at the discretion of

such officer or Court, on the execution by him of a bond without surety for his appearance as hereinafter provided. Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody."

Under s. 548, *post*, a Court may, at any stage of any inquiry, trial, or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it essential to the just decision of the case.

See notes to s. 252, *supra*.

Remand to Custody of Police.—"There is no express provision in the Code regarding the remand of an accused person to Police custody after he has been sent before the Magistrate. Such a course is only warranted under the same circumstances as would warrant the Magistrate's ordering the detention of the accused person by the Police for more than twenty-four hours. There is a great distinction between such a remand and an ordinary remand to the Magistrate's lock-up on the adjournment of an inquiry, owing to the absence of a witness or from any other reasonable cause. The non-completion of the inquiry justifies the latter, but the former requires something more, as it is expressly provided that the non-completion of the inquiry shall not, in the absence of a special order of a Magistrate, be deemed to be a sufficient cause for the detention of an accused person by the Police. A remand to Police custody ought only to be granted in cases of real necessity, and when there is good reason to believe that the accused can point out property or do anything that will assist in elucidating the case."—*Smyth*, p. 87.

Section 61 provides that no Police-officer shall detain in custody a person arrested without warrant for a longer period than, under all the circumstances of the case, is reasonable, and such period shall not, in the absence of a special order of a Magistrate under s. 167, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Section 167 is as follows:—"Whenever it appears that any investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by s. 61, and there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate. The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction. A Magistrate authorizing under this section detention in the custody of the Police shall record his reasons for so doing. If such order be given by a Magistrate other than the District Magistrate he shall forward a copy of this order with his reasons for making it to the Magistrate to whom he is immediately subordinate."

The detention by the Police is altogether different from the custody in which an accused person is kept under remand given under s. 344. The detention by the Police under s. 167 cannot exceed in all fifteen days including one or more remands—*Emp.* v. *Engadu*, I. L. R. 11 Mad. 98.

A remand cannot be granted in the absence of the prisoner. The meaning of a remand is, that a prisoner is brought up and re-committed to custody.—*Mad. H. C. Pro.*, 10*th June* 1867; *Weir*, p. 34.

As to remanding accused persons, see further s. 208, *supra*, and the notes thereto.

Compounding offences.

345. The offences punishable under the sections of the Indian Penal Code, described in the first two columns of the table next following, may be compounded by the persons mentioned in the third column of that table:—

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass . .	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal breach of contract of service	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman.	498	
Defamation . . .	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

See Act X of 1875, s. 151, and Act IV of 1877, s. 133.

Act X of 1872, s. 133, provided that, in the cases which might lawfully be compounded, injured persons might compound the offence out of Court, or in Court with the permission of the Court; and that such withdrawal from the prosecution should have the effect of an acquittal of the accused person.

Considerable doubt existed formerly as to what offences might be compounded. See the cases collected in *Reg.* v. *Rahimat*, I. L. R. 1 Bom, 147. It is now clear that only the offences mentioned in this section may be compounded.

Although under this section a married woman may, without the consent of her husband or against his wishes, compound the offence, where she has been defamed by the imputation of unchastity, her husband is "a person aggrieved" by the defamation, and a Magistrate may take cognizance of the offence under s. 198 upon his complaint.—*Chellam Naidu* v. *Ramasami*, I. L. R. 14 Mad. 379.

As to withdrawal of complaints, see s. 248, and as to discharging an accused person, when, upon the day fixed for the hearing, the complainant is absent, and the offence may be lawfully compounded, see s. 259.

Act VIII of 1882, s. 6, provides that in s. 214 of the Indian Penal Code, for the exception, the following shall be substituted, namely —

"*Exception.*—The provisions of ss. 213 and 214 do not extend to any case in which the offence may lawfully be compounded." See the provisions of these sections.

The fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under s. 211 of the Penal Code.—*Emp.* v. *Atar Ali*, I. L. R. 11 Cal. 79. In the case of *Himmat Singh* v. *Bukhtawar*, Punj. Rec., 1883, p. 57, it was held that the withdrawal of a complaint on the composition of an offence under this section did not preclude the Magistrate from awarding compensation under s. 250, (s. 560) if in his opinion the complaint was frivolous or vexatious; but now see *Emp.* v. *Khushab*, Punj Rec., 1888, p. 35.

In the Punjab it has been held that the effect of s. 345 of the Code, read with s. 3 of the Indian Majority Act 1875, is that a person under the age of 18 years cannot lawfully compound the offence declared to be compoundable by the first portion of the former section.—*Shib Singh*, Punj. Rec., 1891, p. 55.

Procedure of Provincial Magistrate in cases which he cannot dispose of

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

See Act X of 1872, s. 45, paras. 1 and 2. That section directed the Magistrate to stay proceedings, &c., when the evidence warranted a presumption that the accused person had been guilty of an offence which such Magistrate was not competent to try. The Magistrate now is to act under this section, when the presumption is that the case is one which should be tried or committed for trial by some other Magistrate.

As to subordination of Magistrates, see s. 17, *ante*.

Where a case, which has been partly heard by one officer, is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it. In one case the High Court declined to interfere, as the prisoners did not appeal or raise any objection at the trial on that ground.—*Kopil Nath Sahi* v. *Konseram*, 14 W. R. Cr. 3 see *Reg.* v. *Adapa Venkanna*, I. L. R 4 Mad. 327. The Magistrate hearing the case is bound to pass an independent judgment upon the facts as they may appear to him from the record, and must not take them as found by the lower Court. If the materials for a judgment appear to be insufficient, he may call up and examine the witnesses, and, if necessary, take further evidence.—*Mad. H. C. Pro.*, 20*th May* 1867; *Weir*, p. 44. See s. 350, *post*.

Where a Subordinate Magistrate, having found certain persons guilty of an offence, submitted the proceedings to a superior Magistrate for more severe punishment, and those proceedings were returned to him as defective, it was held by the Madras High Court, that he was competent to record a fresh and different finding as to the guilt of the accused upon the further proceedings held by him in the case – *Mad. H. C. Pro.*, 15*th July* 1878, *Weir*, p. 44.

A reference under this section to a District or Divisional Magistrate should be by a brief report explaining the nature of the case. All the proceedings held by the Subordinate Magistrate should be submitted for the information of his superior, who will nevertheless proceed altogether *de novo* — See *Mad. H. C. Pro.*, 22*nd December* 1864 *and* 22*nd May* 1865, *Weir*, p. 32 see *Queen* v. *Adapa Venkanna*, I. L. R. 4 Mad. 327.

It was held in Madras, that a Divisional Magistrate could not refer to another Magistrate a case referred to him by a Subordinate Magistrate, but must deal with it himself.—*Mad. H. C. Pro.*, 8*th and* 10*th November* 1870; *Weir*, p. 32.

Magistrates are not at liberty to pass over material parts of the evidence in cases before them, and so to withdraw cases from the cognizance of the proper tribunals.—*Queen* v. *Ramtahal Sing*, 5 W. R. Cr. 65. See *In re Chunder Seekur Sookul*, 1. C. L. R. 434.

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction over the minor charges (*In re Chunder Seekur Sookul*, 1 C. L. R. 434. *Ramanand Mahton* v. *Koylash Mahton*, I. L. R. 11 Cal. 236 *Emp.* v. *Abdool Karim*, I. L. R. 4 Cal. 18 (S. C.) *In re Abdool Kadir*, 3 C. L. R. 44) such proceedings are void under s. 530, *infra*. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really merely exaggeration and not to be believed.—*Ibid*.

If a Magistrate, not being empowered in that behalf, tries an offender summarily, his proceedings are void.—*S.* 530, *post.*

An officer, it was held, invested with special powers under s. 34, *supra*, should rarely, if ever, try a case himself where it appears from some of the evidence that the accused might have been charged with an offence beyond his jurisdiction to take cognizance of.—*Emp.* v. *Paramananda*, I. L. R. 10 Cal. 85.

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings, and commit the accused under the provisions herein before contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Magistrates are not at liberty to pass over material parts of the evidence in cases before them, and so to withdraw cases from the cognizance of the proper tribunals.—*Queen* v. *Ramtahal Sing*, 5 W. R. Cr. 65: see *Puran Telee* v. *Bhuttoo Dome*, 9 W. R. Cr. 5.

A Magistrate may stop further proceedings and commit for trial after a charge has been drawn up.—*Emp.* v. *Kudrutoollah*, I. L. R. 3 Cal. 495.

A Magistrate to whom a case is referred for enhancement of punishment (see s. 348) may order the committal of the case for trial by the Sessions Court.—*In re Chinnimarigadu*, I. L. R. 1 Mad. 289.

The following instructions as to cases where death has ensued, and it is doubtful whether the offence of culpable homicide has been committed, have been issued by the Calcutta High Court:—In cases where death appears to have resulted from injuries voluntarily inflicted by the party accused, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver charge and convict him of hurt or grievous hurt only, unless they are quite clear that there is no sufficient evidence to warrant a commitment to the Sessions for murder or culpable homicide not amounting to murder.—*Cal. H. C. C. O. No.* 9, *6th September* 1869; *Wilkins*, p. 112.

See note to s. 209, *supra.*

Except as provided by s. 305, which relates only to a sentence of whipping, which cannot be carried out owing to the state of health of the prisoner, it was held that no Criminal Court, whether a High Court [*Queen* v. *Mehtarji Gopalji*, 7 Bom. H. C. R. Cr. Cas. 67. *Queen* v. *Godai Raout*, 5 W. R. Cr. 61: (S. C.) 1 Wym. Cr. Rul. (F.B.) 63: *In re Krishno Churn*, 17 W. R. Cr. 2], a Sessions Court (*Queen* v. *Poran Mal*, 23 W. R. Cr. 49), or a Magistrate (*Reg* v. *Tukia Valad Gunji*, 1 Bom. H. C. R. 3), has power to review or alter a sentence when it has been formally recorded; and a lower Court has no power to quash its own conviction though illegal.—*In re Ganowree Bhooea*, 6 W. R. Cr. 70. Now s. 369 expressly provides that no Court other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in s. 395, or to correct a clerical error.

A judgment or final order pronounced and signed in accordance with this section cannot be altered or reviewed by the Court which has given such judgment or order. If the Judge, after pronouncing and signing the judgment or order, should discover any error in the proceedings, the proper course is to apply to the High Court for orders.—*Mad. H. C. Pro.*, 13*th November* 1873; *Weir*, p. 17.

Where a Sessions Judge added a note to his judgment, throwing doubts on the conclusion at which he had arrived on the evidence, STUART, C. J., described the proceeding as most unwarrantable.—*Emp.* v. *Chattar Singh*, I. L. R. 2 All. 33.

As to the mode of delivering judgment and contents and language of judgment, see ss. 366 and 367, *post.*

Trial of persons previously convicted of offences against coinage, stamp-law or property.

348. Whoever having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court as the case may be; or in district in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

If it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous conviction in the charge.

If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after.—*Queen* v. *Rajcoomar Bose*, 19 W. R. Cr. 41: and see *Queen* v. *Essan Chunder Dey*, 21 W. R. Cr. 40. A statement in a Court that, at the time when the prisoner committed the offence, he had been previously convicted of offences punishable under the Indian Penal Code, is not a sufficient compliance with the provisions of this paragraph.—*Queen* v. *Sheik Jakir*, 22 W. R. Cr. 39.

As to previous conviction, see further notes to ss. 221 and 310, *ante*, pp. 211 and 292, and to s. 511, *post*.

Chapter XII of the Indian Penal Code relates to offences relating to coin and Government stamps, and Chap. XVII to offences against property.

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion after hearing the evidence for the prosecution and the accused that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused to the District Magistrate or Subdivisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and re-call and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

A Magistrate can only transfer a case under this section for the reasons given by the section.—*Emp.* v. *Radhe*, I. L. R. 12 All. 66.

It is not competent for a Magistrate, to whom a case has been referred, to return the case to the referring Magistrate, on the ground that, in his opinion, the latter has power to pass an adequate sentence.—*Dula Faqueer* v. *Bhagirat Siroar*, 6 C. L. R. 276; but see *Mad. H. C. Pro.*, 8*th November* 1870; 5 *Mad. H. C. R. Appx. xliii*; *Weir*, p. 32. C. P. C 349. Nor has he power to send the case for inquiry to another Magistrate.—*Queen* v. *Velayudam*, I. L. R. 4 Mad. 233: *Pro.*, 6 *Mad. H. C. R. Appx. ii*. See, however, *Reg.* v. *Mangla Bhutia*, 7 Bom. H. C. R. Cr. 69, where it was held that a District Magistrate may refer for trial to a full power Magistrate a case submitted to such District Magistrate by a Subordinate Magistrate.

The word 'order' in this section, associated as it is with the words 'judgment and sentence,' it was held, means a final order, *i.e.*, one disposing of the case so far as the Magistrate, to whom a Subordinate Magistrate submits the proceedings of the case for higher punishment, is concerned. It does not deprive that Magistrate of the exercise of his discretion as to its being a proper case for the Sessions and of the power of committing it for trial given to him by the Code. See *Emp.* v. *Abdulla*, I. L. R. 4 Bom. (F. B.) 240: and *Emp.* v. *Haria Tellapa*, I. L. R. 10 Bom. 196. But see *In re Chinnimarigadu*, I. L. R. 1 Mad. 289. In *In re Bhickaree Mullick*, 10 W. R. Cr. 50, it was held that when a case is committed to a Magistrate under this section, he alone has jurisdiction, and cannot commit to the Sessions on the ground that he considers the sentence which he is empowered to inflict insufficient.

In the case of *Emp.* v. *Haria Tellapa*, I. L. R. 10 Bom. 196, a second class Magistrate under this section transmitted a case to a Subdivisional Magistrate, being of opinion that a more severe punishment should be inflicted than he himself was empowered to give. The Subdivisional Magistrate, instead of disposing of the case, returned it to the second class Magistrate for committal, and thereupon the latter committed it. It was held that, in thus returning the case, the order of the Subdivisional Magistrate was illegal, as he was bound to pass a final judgment, sentence, or order.

Where an Assistant Magistrate convicted a person under ss. 406 and 417 of the Penal Code and referred the case to the District Magistrate for sentence, the latter, being of opinion that the offence was one properly punishable under s. 420 of the Penal Code, and one which the Assistant Magistrate had no jurisdiction to deal with, held that the reference was *ultra vires* and illegal. The High Court however, held that he was not entirely without jurisdiction as he was competent to commit the accused to the Court of Sessions, and that the District Magistrate might, if he thought proper, commit the accused to the Court of Sessions.—*Abdul Wahab* v. *Chandia*, I. L. R. 13 Cal. 305. In another case, where a second class Magistrate transmitted a case to the District Magistrate on the ground that he was unable to inflict a sufficiently severe sentence, the District Magistrate returned the record to the second class Magistrate, directing him to commit the accused to the Sessions Court which he did. The High Court on reference held that the commitment was not illegal.—*Emp.* v. *Chandu Goala*, I. L. R. 14 Cal. 356. In a similar case the Bombay High Court while allowing the commitment to stand directed that in all cases referred under this section the Court to which the case was referred should dispose of the case itself and not send it back to the Court by which the reference was made for committal to Sessions.—*Emp.* v. *Veranna*, I. L. R. 9 Bom. 377.

In the case of *In re Chinnimarigadu*, I. L. R. 1 Mad. 289, it was held that a Magistrate to whom a case is referred for enhancement of punishment may order the committal of the case for trial by the Sessions Court.

When the proceedings in a case tried by a Subordinate Magistrate are submitted to a District Magistrate to pass sentence upon the accused, the accused is entitled to be present at the passing of the sentence (*Reg* v *Ragha Naranji*, 7 Bom. H C. R. Cr. 31), and to be heard in his defence—*Reg* v. *Gunesh Sircar*, 7 W. R Cr 38. So the accused person is entitled to be present before the District Magistrate when he takes into consideration the finding and proceedings of the Subordinate Magistrate, even though the District Magistrate does not examine the parties, or re-call and examine any witness who may have already given evidence in the case, or may not call for and take any further evidence inasmuch as the accused person will be at liberty to contend before the District Magistrate that there is no sufficient cause made against him for a conviction, and the District Magistrate, if he concur in that view, will be at liberty to order an acquittal and discharge.—*Bom. H. C. Cr.* 40. See note to s. 437, *post*.

Appeal.—See ss. 407 and 408, *infra*

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another

350. Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:—

(*a*) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

The power given by this section does not extend to a Sessions Judge—*Taradu Bukadu* v. *Queen*, I. L. R 3 Mad 112. The section is intended to provide for a case where an inquiry or trial has been commenced before one incumbent of a particular post and that officer ceases to exercise jurisdiction in that post and is succeeded by another officer.—*Emp.* v. *Radhe*, I. L. R. 12 All. 66. See *Buta Singh* Punj. Rec., 1884, p 1.

The words 'the whole or any,' have been added, apparently, in consequence of the decision in *Queen* v *Khan Mahomed*, 24 W R. Cr. 53, where it was held, that the provisons of s 328 of Act X of 1872, only applied when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another who has and exercises jurisdiction in such cases.

Ordinarily, where a case which has been partly heard by one officer is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it. In a case where that was not done the High Court declined to interfere, as the prisoners did not appeal or raise any objection at the trial on that ground.—*Kopil Nath Sahai* v. *Komeeram*, 14 W R Cr. 3.

In the case of *Thakur Dos Manjhi* v. *Nomdar Mundul*, 24 W. R. Cr. 12, the High Court declined to interfere where the evidence was taken entirely by one Magistrate and the decision passed by another, considering that, although s. 328 of Act X of 1872 did not provide for such a case, it must first be shown that the accused person had been prejudiced by the way in which his case was tried, and as this was not alleged, the Court refused to interfere.—See *Kesra Ram* v. *Emp.*, Punj. Rec., 1884, p. 7, and s. 537, *post*.

Notwithstanding the introduction of the words 'accused' and 'conviction,' the provisions of this section, it has been held, apply to an inquiry instituted under s 107, with a view to enforcing the giving of security against a breach of the peace. And in such a case, where the Magistrate by whom only part of the evidence has been taken is succeeded by another Magistrate while such inquiry is pending, the person called upon to show cause under the latter section may insist upon the re call and re examination of the witnesses whose evidence has already been taken by the former Magistrate. See *Buroda Kant Roy* v. *Korrimuddi Moonshee*, 4 C. L. R. 452 But it

seems doubtful whether this section would apply to proceeding, under s. 145, *ante*. See *Guru Churn Sen* v. *Kkit Nath Das Biswas*, 23 W. R. Cr. 62. Where a Magistrate on complaint made having issued process and examined witnesses in support of the complaint, was succeeded by another Magistrate, who on taking up the case referred the complaint to the Police for inquiry and report, apparently under s. 202, and upon receipt of the report discharged the accused, the High Court held that the order of the latter Magistrate was illegal, and directed him to proceed according to law. A reference to the Police under s. 202, it was said, could not be made after evidence had been taken and process issued.—*Sadagopacharyar* v. *Ragavacharyar*, I. L. R., 9 Mad. 282

New Trial.—As to use of record in former trial, see *In re Deri Dutt*, 7 C.L.R. 193.

Detention of offenders attending Court.

351. Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Section 193, *ante*, provides that, "except as otherwise expressly provided by this Code, or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf."

A Magistrate, it was held, under the former Code, was not justified in taking a person, without any previous notice or summons, from among the audience or attendant witnesses in open Court, and in placing him in the dock to be immediately tried upon a charge which had been already commenced to be entertained against other prisoners and on which evidence has already been given. Section 104, [351] it was said, applied to investigations preliminary to commitment for a subsequent trial and not to cases where the trial was actually being proceeded with.—*Queen* v. *Sutherland*, 14 W. R. Cr. 20.

Courts to be open.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person shall not have access to, or be, or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

NOTE.—*Upper Burma*:—Notwithstanding anything contained in the Code, in Upper Burma, excepting the Shan States, the Local Government may from time to time make rules with respect to the record to be made in cases tried by such village headmen as are Magistrates of the third class and as to the disposal of the record—Reg. V of 1892, Sched. (IX). See Reg. V of 1892, in the Appendix, *post*.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided all evidence taken under Chapters XVIII, XX, XXI, XXII, and XXIII shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in presence of his pleader.

Chapter XVIII relates to inquiry into cases triable by the Court of Session or High Court Chap. XX, to the trial of summons-cases by Magistrates; Chap. XXI, to the trial of warrant-case by Magistrates; Chap. XXII, to summary trials (under s. 265, *supra*, under certain circumstances the personal attendance of an accused may be dispensed with); and Chap. XXIII, to the trial before High Courts and Courts of Session.

As to when the attendance of a witness may be dispensed with, and his evidence taken on commission, see Chap. XL, *infra*.

Section 512, *post*, provides for the taking of evidence in the absence of an accused who has absconded.

Where three separate charges were preferred at the same time and the prisoners were convicted on the evidence recorded in one case, without hearing their defence in the other two cases, the proceedings were quashed.—*Queen* v. *Bunko Behary*, 1 W. R. Cr. 36.

At a trial of a party of Hindus for rioting the Magistrate, instead of examining the witnesses for the prosecution allowed copies to be admitted of the depositions of the same witnesses which had been recorded in a previous trial of a party of Mahomedans who were opposed to Hindus in the same riot. These copies were read out to the witnesses who were then cross-examined, no objection being taken to the procedure. It was held that the procedure was irregular, but that the irregularity was cured by s. 537 of the Code and s. 167 of the Evidence Act, as it was not shown that there was any failure of justice, or that the accused had been substantially prejudiced and the matters elicited in cross-examination were sufficient to sustain the conviction.—*Emp.* v. *Nund Ram*, I. L. R. 9 All. 609.

Presence of Accused.—Where a *purda* lady was examined in a passage screened from the direct view of the Court and her voice could be heard perfectly and the accused made no objection, it was held that this was virtually a hearing of her evidence in the presence of the accused.—*Hassan Khan*, Punj. Rec., 1887, p. 95.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner:—

Manner of recording evidence outside Presidency-towns.

Presidency Magistrates.—As to the mode of recording evidence in the Courts of Presidency, Magistrates, see s. 362, *post*.

Witnesses not to be kept Waiting.—(*a*) The evidence of witnesses should invariably be recorded as soon as possible after their attendance. If from unavoidable causes an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should as a rule, be examined at the first sitting of the Courts on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner.

(*b*) Chief Magistrates of Districts should carefully supervise the returns of their subordinates, as they will be held responsible for the correction of irregularities.—*Cal. H. C. C. O., No.* 12 *of 27th November* 1865; *Wilkins*, p. 7.

Particulars to be recorded for the Identification of Witnesses.—All Magisterial officers shall, in the examination of prosecutors, witnesses, and prisoners, record in each deposition, statement, or defence the following particulars, which are indispensably necessary for the future identification of the parties examined, *viz.*, the name of the person examined, the name of his or her father, and, if a married woman, the name of her husband, the religion, caste, profession, and age of the party or witness, and the village and pergunnah in which he or she resides.—*Cal. H. C. C. O., No.* 19 *of 17th September* 1864; *Wilkins*, p. 8.

Particulars for the Identification of Prisoners.—Attention must be paid to correctness and uniformity in the manner of spelling the names of prisoners in the record of evidence. This is a point of great importance, and should meet with particular attention. Where several prisoners bearing the same or similar names are included in one trial, care should be taken, in recording the evidence given by each witness, to specify the name of the father of the person charged, whenever the name of any one of them is mentioned. Very serious inconvenience has resulted from the neglect of this precaution.—*Cal. H. C. C. O., No.* 135 *of 22nd February* 1833; *Wilkins*, p. 8.

Particulars as to recording Evidence of Witnesses where the meaning is doubtful.—(*a*) In depositions in which there may be any doubt as to the exact meaning of any expression used, and in which the doubtful expression has an important bearing on the offence with which the prisoner is charged, the Court would suggest the expediency of transcribing in Roman characters, the words actually used, in order that the Court may be in a position, on the matter coming before it, without fear of error, to determine on their exact signification, and, in consequence, to give them their due and proper weight.

(*b*) Should any instance occur in which a foreign language is used, or in which the evidence may be delivered in a dialect to which a Judge may be unaccustomed, an interpreter should be employed (see s. 543 of the Code of Criminal Procedure, and s. 5 of Act X of 1873).—*Cal. H. C. C. O., No.* 9 *of 20th August* 1865; *Wilkins*, p. 9.

The following rule is in force in Bombay :—

All Magistrates, Sessions Judges, and Assistant Sessions Judges shall, in the examination of prosecutors, witnesses, and prisoners, record in each deposition, statement, or defence the following particulars which are indispensably necessary for the future identification of the parties examined, *viz.*, the name of the person examined, the name of his or her father, and, if a married woman, the name of her husband, the caste, profession, and age of the party or witness, and the village and district in which he or she resides.—*Bombay Gazette*, 1879, pp. 471, 475.

As to taking evidence, see further notes to s. 253, *ante*.

355. In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (*b*) to (*h*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

Such memorandum shall be written and signed by the Magistrate with his own hand and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same ; and such memorandum shall form part of the record.

See notes to s. 260, *ante*.

The offences mentioned are :—

(*b*) Offences relating to weights and measures, under ss. 264, 265, and 266 of the Indian Penal Code :

(*c*) Hurt, under s. 323 of the same Code :

(*d*) Theft, under ss. 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees :

(*e*) Receiving or retaining stolen property, under s. 411 of the same Code, where the value of such property does not exceed fifty rupees :

(*f*) Assisting in the concealment or disposal of stolen property, under s. 414 of the same Code, where the value of such property does not exceed fifty rupees :

(*g*) Mischief, under s. 427 of the same Code :

(*h*) House-trespass, under s. 448 of the same Code :

(*i*) Insult with intent to provoke a breach of the peace, under s. 504, and criminal intimidation, under s. 506 of the same Code :

(*j*) Abetment of the same offences :

(*k*) An attempt to commit any of the foregoing offences when such attempt is an offence.

The direction that the Magistrate must make a "memorandum of the substance of the evidence of each witness as the examination of the witness proceeds," is not complied with by a mere statement that a witness deposes as the last.—*Reg.* v. *Byharalal Surjim*, 1 Bom. H. C. R. 91 ; Bom. H. C. Cir. 257 : *Queen* v. *Mullee Nushyo*, W. R. Sup. Vol. 18. If the Magistrate is prevented from making the memorandum, he must record the reason of his inability to do so. Omission to make a memorandum cannot be justified except under such circumstances as render it impossible for the Magistrate or Sessions Judge to make it. Want of time cannot be accepted as a valid excuse.—*Smyth*, p. 119.

When, during the investigation of a complaint, it appears to the Magistrate that a witness is giving false evidence, so that criminal proceedings against such witness are likely to be necessary, the Magistrate will exercise a sound discretion under s. 359 in taking down at least the evidence of this particular witness at length, in the manner prescribed in ss. 356, 357, and 360.—*Cal. H. C. O., No.* 4, *30th March* 1864 ; *Wilkins*, p.112. See the provisions of ss. 338 and 339, *post*.

Presidency Magistrates.—As to the mode of recording evidence in Presidency Magistrates' Courts, see s. 362, *post*.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Record in other cases outside Presidency-towns.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Evidence given in English.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

The evidence is ordinarily to be taken in the form of a narrative.—*S.* 359, *infra*.

Chapter XII relates to disputes as to immoveable property, and Chap. XVIII to inquiries into cases triable by the Court of Session or High Court.

A Magistrate is competent under this section to convict an accused person on his admission of the imputed offence, and to sentence him without any further record. Any subsequent irregularity, therefore, in the mode of the record could not affect the propriety of the conviction.—*In re Chummun Shaha*, 2 C. L. R. 317.

An omission to record the evidence in the manner prescribed is so material an error, that the proceedings may be quashed.—*Khetter Monee Dassee* v. *Sreenath Sircar*, 11 B. L. R. Appx. 5.

In each deposition the name of the person examined, the name of his or her father, and, if a married woman, the name of her husband, the religion, caste, profession, and age of the party or witness, and the village or pergunnah in which he or she resides, should be recorded.—*Cal. H. C. C. O., No.* 19, 17*th September* 1864; *Wilkins*, p. 8.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

Language of record of evidence.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

In the Settlements of Port Blair and the Nicobars, the evidence of complainants and witnesses shall be recorded in the vernacular language of the officer presiding over the Court.—*Notification*, 20*th March* 1874, *Gazette of India*, 1874, p. 149.

In proceedings before the Court of Sessions at Aden, or before any Magistrate or class of Magistrates in that Settlement, the evidence of complainants or witnesses must be taken down in English by the Sessions Judge or Magistrate, with his own hand, whether the vernacular language of such Sessions Judge or Magistrate is or is not English.—*Bombay Gazette*, 1873, p. 277.

In Burma, the evidence of complainants and witnesses must be taken down by all Magistrates and Sessions Judges, with their own hand in the vernacular language of such Magistrates or Sessions Judges, unless such Magistrate or Sessions Judge be prevented by any sufficient reason from taking down the evidence of any complainant or witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation.—*Burma Gazette*, 1873, Part II, p. 7.

Throughout the Punjab, in the trial of offences punishable with death by Courts of Session, and in all trials by native Magistrates, the evidence of complainants and witnesses must be taken down by the presiding Judge himself in his own vernacular language, provided that if the vernacular language of the Judge is not English or the language in ordinary use in the district in which the Court is held, such Judge may take down the evidence in English or in the language in ordinary use in the district in which the Court is held, instead of in his own vernacular, if he be sufficiently acquainted with either of these languages.—*Punjab Gazette*, 1873, p. 76; *Smyth*, p. 118.

The following rules also are in force in the Punjab:—

1. In all trials in which sentence of death is legal, the evidence shall be taken down by the Sessions Judge himself in the English language. There may be a counterpart in the vernacular of the Court at the discretion of the Sessions Judge for his own satisfaction.

(2) In all other proceedings before the Court of Sessions, the evidence is to be taken down in the manner provided in s. 334 (356) of the Code, unless the Judge prefer to adopt rule 1 in such cases also.

(3) European Magistrates will record the evidence in the manner laid down in s. 333 (355) in summons-cases, and in cases of the kind referred to in s. 222 (260) when tried by a Magistrate of the first or second class otherwise than at a summary trial.

(4) In all other trials, European Magistrates will record the evidence in the manner laid down in s. 334 (356), unless the Magistrate prefers to adopt rule 1; but in that case he must not omit the vernacular counterpart.

The authority conferred on an officer under this section, it would seem, is personal to that officer, and remains in force only so long as he remains in the particular district in which it has been conferred. See *Pro.*, 25*th November* 1869; 5 *Mad. H. C. R. Appx. ix; Weir*, p. 11. When the authority has been conferred on any officer, all depositions taken before him should, unless for some special reason, be recorded in the vernacular.—*Ibid.*

In Madras, all applications from Judges and Magistrates for authority to take down the evidence of complainants and witnesses in their vernacular language must be made to the Local Government through the High Court. In the case of Magistrates subordinate to the Magistrate of the District, all such applications should be accompanied by an expression of the District Magistrate's opinion, whether the authority should be granted or withheld.—*Mad. Pro.*, 25*th November* 1869; 5 *Mad. H. C. R. Appx. ix; Weir*, p. 11.

In depositions in which there may be any doubt as to the exact meaning of any expression, and in which the doubtful expression has an important bearing on the offence with which the prisoner is charged, it is expedient to transcribe in Roman characters the words actually used, in order that the High Court may be in a position, on the matter coming before it, without fear of error, to determine their exact signification, and in consequence to give them their due and proper weight. Should any instance occur in which a foreign language is used, or in which the evidence may be delivered in a dialect to which a Judge may be unaccustomed, an interpreter should be employed. —*Cal. H. C. C. O., No.* 9, 20*th August* 1885; *Wilkins*, p. 8.

Plea how Recorded.—The language in which a plea is conveyed to the Court by the interpreter is the language in which it should be recorded.—*Emp.* v. *Vaimbitee*, I. L. R. 5 Cal. 826.

See ss. 5, 255, and 271, *ante*.

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

The provisions of this section being for the protection of witnesses only, the fact that witnesses did not understand their depositions when read over, although they may not have required them at the time to be interpreted, affords no ground for an application by the accused to set aside a conviction.—*In the matter of Akhoy Kumar*, 7 C. L. R. 393. See, however, the case of *Queen* v. *Isnur*

Raut, 8 W. R. Cr. 63. There the evidence was taken down by the Magistrate in English, and no memorandum was attached to it, stating that it was read over to the witness in a language which he understood, and it was held that there had been an error in law by which the accused was materially prejudiced. The memorandum required by this section ought always to be appended to the depositions.—*Queen* v. *Hossein Sirdar*, 13 W. R. Cr. 17.

This section does not apply to the examination of prisoners.—*Queen* v. *Radhoo Jana*, 12 W. R. 44. Section 364 provides for the recording of the examination of accused persons.

This section does not seem to make it necessary that the evidence when completed should be read over to witness by the Court itself.

A Sessions Judge, after hearing a general statement made by a mooktear engaged in the case that the committing Magistrate was not in the habit of reading over depositions to the witnesses, refused to receive certain depositions as evidence, and also refused to allow the Magistrate to be called as a witness. No objection was taken to the admisson of the depositions by the Crown, and the accused were eventually convicted. The High Court held that the depositions ought to have been admitted, and the conviction was set aside.—*Adyan Singh* v. *Emp.*, I. L. R. 13 Cal. 121.

Section 205 provides for an accused, in certain circumstances, appearing by pleader.

Interpretation of evidence to accused or his pleader.

361 Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader, and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

See s. 543, *infra*, as to the duties of interpreters. As to affirmation or oath to be taken by interpreters, see Indian Oaths Act (X of 1873), s. 5.

This section relates only to the oral evidence of witnesses. As to documentary evidence, although a prisoner has a right to have all or any part of any document used on his trial translated or interpreted to him, yet where a document is put in for the purpose of merely giving formal proof of that which is an uncontested fact, it is not necessary to interpret it at length. It would be sufficient if the prisoner was made to understand what the document was, and for what purpose it was used.—*Queen* v. *Anserooddeen*, 15 W. R. Cr. 26.

See *Emp.* v. *Vaimbles*, I. L. R. 5 Cal. 826.

Record of evidence in Presidency Magistrates' Courts.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

See Act IV of 1877, s. 115. In that section it was directed that "no Presidency Magistrate shall impose a fine exceeding Rs. 200, or imprisonment for a term exceeding six months, unless he *has* recorded the evidence of the witnesses." It will be observed that a material alteration has been made in the present Code. From the wording of this section it would appear to be necessary, either that the Magistrate shall make up his mind as to the sentence to be passed or likely, from the nature of the case before him, to be passed, before the evidence is gone into, or that, having determined to pass such sentence as is mentioned in the section, he shall re-call and re-examine the witnesses and record their evidence. Probably what the Legislature meant to say was, that in cases in which the Magistrate may impose a fine exceeding Rs. 200, or imprisonment exceeding six months, he shall take down the evidence in the manner directed. Compare also Act X of 1872, s. 335. As to the penultimate para., see Act X of 1872, s. 338; Act IV of 1877, s. 115.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Punjab, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

Examination of accused how recorded.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

Act X of 1872, s. 346, paras. 1, 2, 3, and 4. See also Act IV of 1877, ss. 84, 123.

The last clause of s. 346 of Act X of 1872 provided that the accused person should sign the record or attest it by his mark. This section, it will be seen, provides only that the record shall be signed by the accused. There is no definition of signature in the Code, and it may be a question as to whether attestation by a mark would be sufficient. Probably such attestation would be considered sufficient.

Section 263 deals with the record in summary trials.

Omissions.—As to the effect of omissions by a Magistrate to comply with the requirements of the section, see s. 533, *infra*. In the case of *Jai Narayan* v. *Emp.*, I. L. R. 17 Cal. 802, it was held that the provisions of s. 164 read with s. 364 are imperative as to the language in which a confession is to be recorded, and that section 533 does not contemplate or provide for any non-compliance with the law in this respect. There a confession was recorded by a Deputy Magistrate in English, although it was made in Hindi, which the Deputy Magistrate perfectly well understood and could write. As it was not impracticable therefore to record the confession in Hindi, it was held that the confession was properly excluded. Where no attempt is made to conform to the provision of s. 164 or of s. 164 read with 364, which are imperative, s. 533 will not render a confession admissible.—*Emp.* v. *Viran*, I. L. R. 9 Mad. 225, p. 240.

Examination of Accused.—It must be borne in mind, as pointed out in the notes to s. 342, that the Court is not competent to subject the accused to cross-examination. The examination under this section is subject to the purpose referred to in s. 342, *supra*, *viz.*, to enable the accused "to explain any circumstances appearing against him," and not to supplement the case for the prosecution against him to show that he is guilty.—*Emp.* v. *Rangi*, I. L. R. 10 Mad. 295: *Ex-parte Viratudra Gaud*, 1 Mad. H. C. R. 199: *Hossein Buksh*, I. L. R. 6 Cal. 96.

In the case of *Emp.* v *Yakub Khan*, I. L. R. 5 All 253, the Court (STUART, C.J., and STRAIGHT, J.) said: "Although the statement (of the accused in the case) was not recorded by question and answer, as it should have been, we find a certificate signed by the Magistrate to the effect that such statement was taken in the presence and hearing of, and contains accurately the whole of the statement made by, the accused. We may here remark that Magistrates, as a rule, do not as strictly follow the provisions relating to the taking the examination of accused persons as they should. We think it well to point out, in reference to ss. 342 and 364 of the new Code, that while it is not intended to empower them to cross-examine persons charged before them, they are, nevertheless, to put any questions which appear necessary at any stage of an inquiry or trial, and particularly when all the witnesses have been examined, 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.'"

Where the provisions of this section are not observed, and there is no certificate by the Magistrate that the examination of the accused was taken in the hearing and in the presence of that officer, and there is no statement that that examination contains the whole statement of the accused,

a Sessions Judge acts rightly in rejecting the evidence and not allowing it to go to the assessors, or jury.—*Queen* v. *Radhoo Jana*, 12 W. R. Cr. 44. See remarks of Court in *Emp.* v. *Yakub Khan*, I. L. R. 5 All. 253.

There is nothing which necessitates a Magistrate to take down the statement of the accused in his own hand. It is enough that he appends a certificate that the examination was conducted in his presence and hearing, and contains accurately all that was stated by the accused person.—*Queen* v. *Lucky Narain Dutt*, 20 W. R. Cr. 50 : *Reg.* v. *Shivya*, I. L. R. 1 Bom. 219. But where a Magistrate admittedly records a confession with his own hand and professes to do so under ss. 164 and 364, it seems reasonable to accept the record made by him as being the record of the confession, notwithstanding that an officer of the Court may also at the same time have recorded the statement. —See *Lalchand* v. *Emp.*, I. L. R. 18 Cal. 549, where the Court accepted the statement recorded by the officer as the record of the confession and treated the record of the Magistrate as a mere memorandum.

The memorandum must now be in the handwriting of the presiding officer, and not under his hand only,—that is to say, signed by him. See *Queen* v. *Rezza Hossein*, 8 W. R. Cr. 55.

A statement under promise of conditional pardon made by an accomplice who afterwards retracts the statement, cannot be used as evidence against the prisoner.—*Queen* v. *Hurdewar*, 5 All. 217. See, however, the cases of *Joyadee Paramanick*, 7 C. L. R. 66, and *Nanha Malla* v. *Emp.*, 13 C. L. R. 326, where the Calcutta High Court expressed a doubt whether such a statement could be used under these circumstances. See notes to ss. 288 and 339, *supra*.

Language.—The whole of the statement of the accused should be accurately recorded as nearly as possible in the words used by him.—*Emp.* v. *Vaimbilee*, I. L. R. 5 Cal. p. 829. See Pitt Taylor § 57, §§ 812, 907, and §§ 725–729—and the section (304) requires that every question put to him and every answer given by him should be recorded in full, but the omission of a Magistrate to have recorded in the vernacular questions asked in the examination of the accused person, does not necessarily render that examination inadmissible as evidence.—*Titu Mya, Appellant*, 1 C. L. R. (P. B.) 1 : (S. C.) I. L. R. 1 Cal. 418, note. Where the confession of an accused person was recorded in a simple narrative instead of in the shape of question and answer, as required by the Code of Criminal Procedure, and there was nothing in the character of the confession or in the circumstances of the case to lead to the inference that the accused had been prejudiced by the error, it was held that the irregularity did not affect the admissibility of the statement in evidence.—*In re Bunshi Sheikh*, I. L. R. 6 Cal. 816. See also *In re Emp.* v. *Sagambur*, 12 C. L. R. 120 : *Fekoo Mahto* v. *Emp.*, I. L. R. 14 Cal. 539.

In the case of *Nilmadhab Mitter*, I. L. R. 15 Cal. 505, the Full Bench expressed a doubt whether the provisions of s. 164 read with s. 364 would be complied with where the answers made by an accused to a Magistrate in one language are taken down in another, unless it could be shown to be impracticable to have taken down the answers in the language in which they were given and whether the defect could be cured by s. 533. In a later case MACPHERSON and HILL, JJ., held that if it were impracticable to record a confession in the language in which it was made, the impracticability should be shown by the prosecution.—*Jat Narayan*, I. L. R. 17 Cal. 862 ; but in an other case—*Lalchand* v. *Emp.*, I.L.R. 18 Cal. 549.—PRINSEP and BEVERLEY, JJ., were of opinion that where a confession was recorded in another language it might be presumed that the law had been complied with and that it had been impracticable to record the confession in the same language as that in it which was made. In Madras, it has been held that no presumption can arise that a confession was "*duly made*" and taken according to law, where on the face of it, it appeared that it was not duly taken.—*Emp.* v. *Viran*, I. L. R. 9 Mad. p. 224. PARKER, J. expressed an opinion that the provisions of s. 164 are imperative, and s. 533 will not render a confession admissible in evidence where no attempt has been made to conform to the provisions of the former section.—*Emp.* v. *Viran*, I.L.R. 9 Mad. 224. There the Deputy Magistrate of Malabar purporting to act under the provisions of the Mapilla Act (Madras Act, XX of 1859), recorded a statement in the nature of a confession made by V, who was under arrest on suspicion of being concerned in a Mapilla outrage. This statement, which was made in Malayalam, was recorded in English in the form of a narrative, and was signed by the Magistrate only. The same Magistrate shortly afterwards, purporting to act under the Code of Criminal Procedure, before any evidence was recorded against V, examined him as to this statement, which was read over and translated to him. In answer to questions, V admitted that he had made it voluntarily. This examination was recorded according to the provisions of s. 364 of the Code of Criminal Procedure. After other evidence was recorded, V retracted his statement. He was committed to the Sessions, tried and convicted mainly on his own recorded statement and examination. The Deputy Magistrate was examined as a witness, and stated that the statement recorded by him was made by V, and was correctly recorded and was made voluntarily. It was held, that the record of the statement made by V to the Deputy Magistrate was not admissible in evidence against V. PARKER, J., was of opinion also that if the confessional statement of V was recorded by the Magistrate in his executive capacity, it was not receivable in examining V as to his confessional statement, before there was any legal evidence on the record against him, was illegal ; and, therefore, the record of such examination could not be used in evidence against V, and that, inasmuch as the record of the statement of V was not admissible, secondary evidence thereof could not be given.

The attestation required by this action of the Criminal Procedure Code is unnecessary when a confession is made in Court to the officer trying the case at the time of trial (*In re Chumman Shah*, I. L. R. 3 Cal. 756), for upon the admission of the accused the Court is competent to sentence him without any further record under s. 255, *supra*.

Under s. 346 of Act X of 1872 it was held, that the direction enjoining that an accused person shall sign the record of his confession is not satisfied by the following,—"Signature of A D (the accused), the handwriting of C D."—*Reg.* v. *Daya Anand*, 11 Bom. H. C. R. 44. In that case the High Court reversed the conviction and sentence, but it does not appear that the accused was

professionally represented. In a later case (*Reg.* v. *Devo Dayal*, 11 Bom. H. C. R. 237), where the prisoner was represented by a pleader who had an opportunity of objecting to the admissibility of an unsigned confession, and did not, the conviction was upheld.

An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court does not commit an offence punishable under s. 180 of the Penal Code.—*Imperatrix* v. *Sirsapa*, I. L. R. 4 Bom. 15. The certificate need not be signed by the prisoner.—*Queen* v. *Rezza Hossein*, 4 Wym. Cr. Rul. 23.

In the case of *Nisal Mistri* v. *Emp.*, 6 C. L. R. 353: (8. C.) I. L. R. 5 Cal. 958, a certificate which contained the words 'taken by me,' but in which the Magistrate omitted to record that the prisoner's statement was taken in his hearing, was treated as substantially a compliance with s. 346 of Act X of 1872.

Section 533, *post*, provides that if any Court before which a confession or the statement of an accused person recorded under s. 164 or s. 364 is tendered in evidence, finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded, and notwithstanding anything contained in the Indian Evidence Act, s. 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

Under s. 287, *ante*, in trials before juries or with assistance of assessors, the examination of the accused duly recorded by the committing Magistrate shall be tendered by the prosecution and read as evidence.

Where more persons than one are being tried, the provisions of s. 30 of the Evidence Act must be borne in mind.—See *Emp.* v. *Dosa Jiva*, I. L. R. 10 Bom. 231. That section of the Evidence Act provides that "when more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

"(*a*) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C. The Court may consider the effect of this confession as against B.

"(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, 'A and I murdered C.' This statement, may not be taken into consideration by the Court as against A, as B is not being jointly tried."

"Offence" as used in that section now includes the abetment of or attempt to commit the offence —Act III of 1891, s. 4 amending s. 30 of the Evidence Act.

A conviction based solely on the confession of fellow-prisoner is bad, for although such a confession may be "taken into consideration" it is not evidence within the meaning of s. 3 of the Evidence Act, and therefore cannot alone form the basis of a conviction.—*Emp.* v. *Khandia bin Pandu*, I. L. R. 15 Bom. 66.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Punjab may, from time to time by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.*

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody, shall be required to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

The writing of the judgment should precede the passing of the sentence or order of discharge or acquittal.—*Emp.* v. *Hargobind Singh*, I. L. R. 14 All. 242.

* Section 424, *infra*, provides that the rules in this Chapter as to the judgment of a Criminal Court of original jurisdiction shall apply, as far as may be practicable, to the judgment of any Appellate Court other than a High Court, provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up or required to attend to hear judgment delivered.

Under s. 205, whenever a Magistrate issues a summons he may dispense with the personal attendance of the accused. And, under s. 424, *post*, unless an Appellate Court otherwise directs, the accused shall not be brought up or required to attend to hear judgment delivered by such Court.

By a rule of the Bombay High Court, dated the 4th February 1873, it was directed "that Sessions Judges and Magistrates shall inform the Officer Commanding the regiment or corps to which he belongs, when any person serving under the Government of Bombay in the Military Department is convicted in a Criminal Court."—*Bombay Gazette*, 1873, p. 110.

In the Punjab, in every case in which a military officer or a soldier is sentenced by a Criminal Court to a fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court shall send a copy of its final order, *proprio motu*, to the immediate superior of the person convicted.—*Smyth*, p. 148.

In Bengal, Judicial Commissioners, Sessions Judges, and Magistrates are directed to forward to the Military Department of the Government of India a copy of the conviction and sentence in all cases in which persons serving under the Government of India in that department are convicted in a Criminal Court.—*Cal. H. C. C. O., No. 6 of 17th July* 1871; *Wilkins*, p. 139.

Language of judgment.

Contents of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted, and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

In a Sessions trial a sentence passed or a direction given that an accused person should be set at liberty, before the judgment is written is illegal.— *Emp.* v. *Haryobind*, I. L. R. 14 All. 242.

A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial.—*Reg.* v. *Mahomed Ali*, 13 W. R. Cr. 50.

What is substantially required by the Code from all Courts is a judgment or final order, stating all such matters as are necessary to enable the appellate or revising authority to form an accurate and well-founded opinion as to what are the conclusions arrived at and the propriety of those conclusions, and in case of a conviction, of the punishment awarded.—*Mad. H. C. Pro.*, 12*th November* 1878; *Weir*, p. 18.

It has been held that, as the section allows a judgment to be given in the alternative where it is doubtful under which of two sections or of two parts of the same section an offence falls, an alternative finding that a trespass was committed with one or other of two intents, either of which would make it criminal trespass as defined by s. 441 of the Penal Code, is sufficient.—*Bura* v. *Emp.*, Punj. Rec., 1886, p. 7.

The judgment or final order should be one complete document containing the charge, finding and the reasons for the finding, the offence of which the accused person is convicted, and the punishment to which he is sentenced. The sentence should not be recorded in the form of a separate proceeding or order, but should form part of the judgment or final order.—*Mad. H. C. Pro.*, 19*th August* 1878; *Weir*, p. 18.

In the case of *Kamruddin Dai* v. *Sonatun Mundal*, I. L. R. 11 Cal. 449, a Sessions Judge, after hearing an appeal, delivered the following judgment:—"It is urged that the evidence is quite untrustworthy and that the decision should be reversed. The depositions have been gone through and commented on at considerable length. The Court finds no ground for interference.

The appeal is dismissed." The High Court held that this was not a sufficient compliance with this section. The case of *Kamruddin Dai* v. *Sonatun Mundul*, I. L. R. 11 Cal. 449, was followed under similar circumstances in the cases of *Ram Das Maghi*, I. L. R. 13 Cal. 110, and *In re Shwappa*, I. L. R. 15 Bom. 11. See *Hakim Singh* v. *Emp.*, Punj. Rec., 1884, p. 54, and s. 424, *post*. See also *Emp.* v. *Ram Narain*, I. L. R. 8 All. 514.

Section 72 of the Indian Penal Code provides: "In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all."

Under s. 236, if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. That section, it was held, applies to cases in which, not the facts are doubtful, but the application of the law to the facts is doubtful. Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty.—*Queen* v. *Jamurha*, 7 N.-W. P. 137.

In *Reg* v. *Mahomed Hoomayoon Shaw*, 13 B. L. R. 324: (S. C.) 21 W. R. Cr. 72, where a person was convicted of giving false evidence upon an alternative charge in the form given in Sched. III of Act X of 1872, the majority of the Full Bench (JACKSON and PHEAR, JJ., dissenting) held, that the conviction was good notwithstanding that the jury had not distinctly found which of the two statements was false. JACKSON, J., was of opinion that such a charge was bad, and further, that an alternative finding upon such a charge was invalid, while PHEAR, J., considered that although a person might be lawfully tried upon such a charge, the jury, or the Court, must, for a conviction, find specifically which branch of the alternative was true.

Where perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken in the case in which it is tried. If the whole proof consists of two conflicting statements, an alternative charge and finding are the regular course.—*Mad. H. C. Pro.*, *30th November* 1874; *Weir*, p. 5; *Pro.*, 4 *Mad. H. C. R.* 1874; *Weir*, pp. 4, 5. But an alternative finding should not be resorted to until both the committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges, and such a finding cannot be based on a charge of giving false evidence upon two statements which are not absolutely contradictory the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made.—*Queen* v. *Bidoo Noshyo*, 12 W. R. Cr. 11. See *Habibullah* v. *Emp.*, I. L. R. 10 Cal. 937.

In Bengal, Sessions Judges in all cases in which they may convict of culpable homicide not amounting to murder, shall invariably mention in their remarks on the trial, within which of the exceptions noted under s. 300 of the Indian Penal Code the culpable homicide was held to come so as not to amount to murder.

Sessions Judges shall invariably record their opinion whether the act by which death was caused was done with the intention of causing death (1) or of causing such bodily injury as was likely to cause death; (2), or with the knowledge that it was likely to cause death, but without any intention to cause death, or to cause such bodily injury was likely to cause death.—*Cal. H. C. C. O., No. 5 of 6th February* 1863; *Wilkins*, 1st Edition, p. 23.

1. Penalty, transportation for life, or imprisonment of either description for a term which may extend to 10 years, and fine.
2. Penalty, imprisonment of either description for a term which may extend to 10 years, or fine, or both.

The words 'heads of the charge to the jury' must be construed reasonably, and include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection on the charge—*Queen.* v. *Kasim Shaikh*, 23 W. R. Cr. 33.

Charge to the Jury need not be Written before being Delivered.—It is not necessary that the direction to the jury should be reduced to writing before delivery; but it is essential that the 'heads of charge' (s. 367) placed upon the record should represent with absolute accuracy the substance of the charge, and be such as to enable the High Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.—*Cal. H. C. C. M., No. 2 of 4th March* 1875; *Wilkins*, p. 116.

Sessions Judges should, in order to assist the inquries of the District Magistrate regarding the cause of an acquittal in the Sessions Court, set forth clearly in the judgment what, in their opinion has led to that result.—*Cal. H. C. C. O., No. 5 of 21st* September 1880; *Wilkins*, p. 116.

Calendars.—Subordinate Judges should submit to the District Magistrate a calendar of every case in which conviction takes place within twenty-four hours from sentence being passed. This enables a District Magistrate at once to take measures towards rectifying injury done by an illegal sentence.—*Bom. H. C. Cir.* p. 43.

A separate sentence should be passed on each charge or head of the charge.—*Bom. H. C. Cir.* p. 258.

The Madras High Court has directed that Magistrates should indicate in their judgment beneath their signatures the extent of the magisterial powers with which they have been invested, adding that the omission to do so frequently impedes the exercise of the powers of revision possessed by the High Court. See *Mad. H. C. Pro.*, *21th July* 1871, *20th November* 1874, *and 3rd February* 1876; *Weir*, p. 19.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of death.

Sentence of transportation.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.

As to submitting a sentence of death for confirmation, see Chap. XXVII; and as to execution, see ss. 381, 382, *infra*.

For form of warrant of sentence of death, see Schd. V, No. 35.

The following rule as to the descriptive roll of a person sentenced to transporation for life is in force in the Punjab :—

A statement shall be prepared by the Magistrate of the District in which the prisoner was committed to the Session, giving a description of the convict and an account of his antecedents and of the offence he has committed. This statement should be prepared immediately after the sentence has been pronounced by the Sessions Judge, and should be forwarded to the Superintendent of the jail where the prisoner is confined to be attached to the warrant. The statement should be in the prescribed form, and a copy of it should be kept in the Magistrate's Office.—*Smyth*, p. 107.

369. No Court other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in section 395, or to correct a clerical error.

Court not to alter judgment.

Section 395 relates only to a sentence of whipping, which cannot be carried out owing to the state of health of the prisoner. Under the corresponding section of the former Code, which was slightly different, it was held that, except under the circumstances referred to in s. 395, no Criminal Court, whether a High Court—*Queen* v. *Mehtarji Gopalji*, 7 Bom. H. C. R. Cr. Cas. 67 : *Queen* v. *Godut Raout*, 5 W. R. Cr. 61 : (S. C.) 1 Wym Cr. Rul. (F. B.) 63 : *In re Krishno Churn*, 17 W. R. Cr. 2), a Sessions Court—(*Queen* v. *Poran Mal*, 23 W. R. Cr. 49), or a Magistrate (*Reg.* v. *Tukia Valad Ganji*, 1 Bom. H. C. R. 3)—had power to review or alter a sentence when it has been formally recorded, and a lower Court had no power to quash its own conviction though illegal.—*In re Gunowree Bhoosa*, 6 W. R. Cr. 70. In terms this section, however, does not apply to a High Court. But it has been said that its provisions, so far as they may affect the High Court, apply merely to questions which arise in its original criminal jurisdiction and which are recorded and subsequently disposed of under s. 434, *post*, and the Letters Patent. See *per* BRODHURST, J., *Emp.* v. *Durga Charan*, I. L. R. 7 All. 672. See also *In re Abdool Sobhan*, I. L. R. 8 Cal. 93. PETHERAM, C. J., was of opinion that the effect of the words "other than a High Court" is precisely the same as if in place of them the Legislature had at the end of the section added : "This section does not apply to the High Court."—*In re Gibbons*, I. L. R. 14 Cal. 42, p. 47. There it was held by a Full Bench that a verdict and judgment of a Division Bench, coupled with the sentence in a criminal case, are absolutely final, and as soon as they have been pronounced and signed by the Judge, the High Court is *functus officio* and neither the Court itself nor any Bench of it has any power to revise that decision or interfere with it in any way.

So it has been held that the High Court has no power to review an order dismissing an application for revision made by an accused person, and the only remedy is by appeal to the prerogative of the Crown as exercised by the Local Government.—*Emp.* v. *Durga Charan*, I. L. R. 7 All. 672. See s. 434, *post* : *Reg.* v. *Godat Raout*, 5 W. R. Cr. 61 : *Emp.* v. *Fox*, I. L. R. 10 Bom. (F. B.) 176.

If a Sessions Judge, after pronouncing and signing the judgment or order, should discover any error in the proceedings, the proper course is to apply to the High Court for orders.—*Mad. H. C. Pro.*, 13*th Nov.* 1873 ; *Weir*, p. 17. Where a Judge added a note to his judgment throwing doubts on the conclusion at which he had arrived on the evidence, STUART, C. J., described the proceeding as most unwarrantable.—*Emp.* v. *Chattar Singh*, I. L. R. 2 All. 33.

In the case of *Rami Reddi* v. *Seshu Reddi*, I. L. R. 3 Mad. 48, where a Sessions Judge, on appeal, annulled the conviction of a Magistrate, but omitted to order a re-trial at the time under s. 284 of Act X of 1872, corresponding with s. 423 of the present Code, it was held he was not precluded by s. 464 of that Act (s. 369 of the present Code) from passing such an order subsequently.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars :—

Presidency Magistrate's judgment.

(*a*) the serial number of the case ;

(*b*) the date of the commission of the offence ;

(*c*) the name of the complainant (if any) ;

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence ;

(*e*) the offence complained of or proved ;

(*f*) the plea of the accused and his examination (if any) ;

(*g*) the final order ;

(*h*) the date of such order ; and

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

In cases which are not appealable to the High Court, a Presidency Magistrate should state his reasons for convicting the prisoner so that the High Court may judge in revision as to whether there were sufficient materials before him to support the conviction.—*Yacoob* v. *Adamson*, I. L. R. 13 Cal. 272. There the accused was convicted of theft and sentenced to six months' rigorous imprisonment, but the notes of the evidence taken by the Magistrate did not afford sufficient materials upon which the prisoner could be legally convicted and the Magistrate had omitted to record his reasons under cl. (*i*) of this section. The High Court set aside the conviction notwithstanding the provisions of s. 537, *post*.

A sentence of fine of less than Rs. 200, with an order for imprisonment in default of payment of the fine, is not a sentence of imprisonment within the meaning of the section.—*Moteeram* v. *Balaseram*, I. L. R. 14 Cal. 174. The meaning of the section is that where the offence is sufficiently grave to involve a fine of Rs. 200, or imprisonment, as the substantive sentence, the Magistrate is bound to record his reasons, but in petty cases in which a less fine only is imposed as a substantive sentence, the decision may be recorded shortly.—*Ibid.* *Per* PETHERAM, C. J.

Judgment to be explained and copy given to accused.

371. The judgment shall be explained to the accused, and, on his application, a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Under s. 25 of Act XI of 1874, any person affected by a sentence or other order passed by a Criminal Court desiring to have a copy of the charge to the jury, was entitled to be furnished therewith on payment, unless the Court for some special reason saw fit to furnish it free of cost.

Section 548, *post*, provides that if any person affected by a judgment or order passed by a Criminal Court, desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith, provided that he pay for the same, unless the Court for some special reason thinks fit to furnish it free of cost.

All prosecutors whose charges are dismissed are affected by the order of discharge, and are, therefore, entitled to obtain copies of the order made by, and of the depositions taken before, the Magistrate.—*Bank of Bengal* v. *Dinonath Roy*, I. L. R. 8 Cal. 166: (8. C.) 10 C. L. R. 190.

Limitation.—As to the last clause of this section, compare Act X of 1872, s. 271 A; Act XI of 1874, s. 22. The time within which the appeal must be filed is seven days from the date of the sentence.—Limitation Act, XV of 1877, Sched. II, Art. 150.

In Burma for the purposes of the Indian Limitation Act, appeals and applications to the Special Court shall be deemed to be respectively appeals to a High Court under the Code of Criminal Procedure.—*Act XI of* 1889, *s.* 71.

(*a*) In exercise of the powers conferred by s. 35 of the Court-Fees Act VII of 1870, and in supersession of previous notifications, the Governor-General in Council remitted the fees payable under the said Act on the following documents, namely:—

(1) Copy of a charge framed under s. 210 of the Code of Criminal Procedure, 1882, or of a translation thereof, when the copy is given to an accused person.

(2) Copy of the evidence of supplementary witnesses after commitment, when the copy is given under s. 219 of the said Code to an accused person.

(3) Copy or translation of a judgment in a case other than a summons-case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under s. 371 of the said Code to an accused person.

(4) Copy or translation of a judgment in a summons-case, when the accused person to whom the copy or translation is given under s. 371 of the said Code is in jail.

(5) Copy of an order of maintenance, when the copy is given under s. 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.

(6) Copy furnished to any person affected by a judgment or order passed by a Criminal Court of the Judge's charge to the jury, or of any order, deposition, or other part of the record, when the copy is not a copy which may be granted under any preceding clause of this notification without the payment of a Court-fee, but is a copy which, on its being applied for under s. 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment.

(7) Copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader, or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court.

(8) Copies of all documents which any such Advocate, Pleader or other person is required to take, in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings.

(9) Copies of judgments or depositions required by officers of the Police Department in the course of their duties.—*Notification, Government of India, No.* 310 *of* 21*st January* 1880: *C. O., No.* 1 *of* 12*th February* 1880; *Wilkins Addenda*, p. 103.

As to exclusion of time spent in obtaining copies in computing period of limitation for appeals, see Limitation Act XV of 1877, s. 12, and *Shamman*, Punj. Rec., 1888, p. 9.

In exercise of the powers conferred by s. 35 of the Court-Fees Act (VII) of 1870, the Governor-General in Council remitted the Court-fees payable under cls. 6, 7, and 9 of Sched. I of the Act on copies furnished by the Criminal Courts for the private use of persons applying for them.

But this notification is not to be deemed to exempt copies furnished thereunder from the payment of the fees chargeable on such copies when filed, exhibited or recorded in any Court of Justice, or received by any public officer.—*Notification of Government of India, No.* 1361 *of* 24*th June* 1881: *C. O., No.* 9 *of* 7*th September* 1881; *Wilkins*, p. 118.

The following rule is in force in the Punjab:—

In all cases in which a person is sentenced to death, the Sessions Judge should, as directed in s. 271A (of the Code of Criminal Procedure, Act X of 1872), explain to the condemned man that he must file his appeal in the Sessions Court within seven days. When an appeal does not accompany the record of the case submitted for confirmation of the sentence of death, the Sessions Judge should certify that no appeal has been filed within the prescribed period notwithstanding the law having been explained to the accused.—*Smyth*, p. 97.

In the North-Western Provinces, the Sessions Judge must record whether the convict desires to appeal, and that the convict was informed that his appeal must be made within seven days.—*N.-W. P. Gazette*, 1873, p. 101.

In Madras, the High Court has laid down that, in case of appeals by prisoner sentenced to death, it is the duty of the District Magistrate to telegraph to the Government Pleader to appear for the Crown, *in the event of the prisoner retaining counsel* before the High Court.—*Madras Notification, 9th July* 1874; *Weir*, p. 73. The italics are in the original.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

In Madras, it seems that the finding and sentence should be communicated by the Magistrate to the Superintendent of Police.—*Mad. H. C. Pro.*, 19*th June* 1866; *Weir*, p. 38.

The following rule is in force in Bombay:—

The Court of Sessions shall, at the conclusion of every trial of prisoners committed thereto, communicate the result thereof to the committing authority for his information.—*Bombay Gazette*, 1879, pp. 471, 475.

In Bengal, Sessions Judges are directed to give every facility to Magistrates and District Superintendents of Police for inspecting the records of cases in their Courts and for the preparation of copies by clerks sent by the District Magistrate—care being taken that the records are not removed from the Judge's office.—*C. O., No.* 5, *dated* 21*st September* 1880; *Wilkins*, p. 116.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

As to proceedings under this Chapter, see s. 537, *infra*.

For form of warrant of commitment under sentence of death, see Sched. V, No. 34.

A Sessions Judge is not authorized to sentence a prisoner convicted of murder to anything less than transportation for life, but if a prisoner be convicted of murder, and the Judge, instead of sentencing him capitally, sentence him to transportation for life, he must explain his reasons for so doing, and may submit any mitigating circumstances for the consideration of Government.—*Queen* v. *Dabee*, W. R. Sup. Vol. 27.

In referring a case to the High Court for the confirmation of a sentence of death, the particulars of the evidence and the Judge's remarks are to be embodied in a letter addressed to the Registrar. An English translation of the whole of the evidence given at the trial should also be submitted.—*Mad. H. C. Pro., 6th and 15th August 1862*; *Weir*, p. 33. Sessions Judges should be careful also to note in their letter of reference whether the prisoner has signified his intention to appeal.—*Mad. H. C. Pro., 3rd April 1873*; *Weir*, p. 33.

It is improper for a Sessions Judge, in referring a sentence of death for confirmation, to recommend the prisoner to mercy, as the law allows an alternative sentence, and the responsibility of deciding whether there are sufficient grounds for not sentencing the prisoner to death rests upon the Sessions Judge himself.—*Mad. H. C. Pro., 24th April 1886*; *Weir*, p. 33. See also the remarks of the Court in the case of *Emp.* v. *Bhup Singh*, I. L. R. 2 All. 771.

Burma:—The following provisions of the Lower Burma Courts Act XI of 1889 may be noted:—

Section 45. The area for the time being comprised within the local limits of the ordinary civil jurisdiction of the Recorder shall be a sessions division, the Court of the Recorder shall be the Court of Sessions for the sessions division, and the Recorder shall be the Judge of the Court of Session.

Section 46. The Recorder shall be the High Court for the whole of Burma (inclusive of Upper Burma and the Shan States) in reference to proceedings against European British subjects and persons jointly charged with European British subjects. (2) When the Recorder, as the High Court for Burma under sub-section (1) in reference to such proceedings, passes sentence of death, the proceedings shall be submitted to the High Court of Judicature at Fort William in Bengal, and the sentence shall not be executed unless it is confirmed by that High Court. (3) When proceedings are submitted to the High Court under sub-section (2), that Court shall, as a High Court, deal therewith, under the provisions, *mutatis mutandis*, of Chapter XXVII of the Code of Criminal Procedure, 1882, as if they had been submitted by a Court of Sessions and the Recorder were the Sessions Judge. (4) If in any case before the Recorder as a High Court under this section any such question arises as is referred to in section 42, and the Government Advocate certifies that, in his opinion there is an error in the decision of the question, the Recorder shall make a reference to the High Court in the manner required by that section, and shall on receipt of the copy of the judgment of the High Court, review the case, or such part of it as may be necessary, and may thereupon reduce or remit any sentence which he has passed.

Section 47. So far as the last foregoing section relates to the Shan States, it shall come into force therein at once notwithstanding anything in section 8, sub-section (2) of the Upper Burma Laws Act, 1886, or in section 3, sub-section (1) of the Shan States Act, 1888.

Section 48. The Court of the Recorder shall (*a*) for the purposes of section 527 of the Code of Criminal Procedure, 1882, and (*b*) in respect of the Magistrates within the local limits of its ordinary civil jurisdiction and the proceedings of such Magistrates, be deemed to be a High Court.

Power to direct further inquiry to be made or additional evidence to be taken.

375. If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

The High Court now has power itself to make a further inquiry or to take additional evidence.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Compare Act X of 1872, s. 288. The words "and convict the accused of any offence of which the Sessions Court might have convicted him" have been added. This alteration has been made, apparently, in consequence of the decision of the Bombay High Court in the case of *Reg.* v. *Holapa bin Dundapa*, I. L. R. 1 Bom. 639, where it was held, under s. 288 of Act X of 1872, that the High Court to which reference was made by a Court of Session for confirmation of a sentence of death on conviction of murder, could not, in the absence of appeal, alter the conviction to one of culpable homicide not amounting to murder, if it was of opinion that the evidence did not establish the former but the latter offence.

When a case is referred under this section, the High Court is bound under the preceding section to go into the facts of the case, although the conviction was by the verdict of a jury.—*Reg.* v. *Jaffir Ali*, 19 W. R. Cr. 57. The result of these two sections appears to be that, in the event of the conviction of a prisoner by a jury for the crime of murder, and sentence of death following thereon upon the reference which must be made to the High Court under s. 374 for confirmation of the sentence, the High Court has the power under this section to acquit the prisoner on the facts, although if the prisoner had been sentenced to transportation for life instead of to death, and had simply himself appealed, the Court would not have been able to disturb the verdict of the jury on the facts. See *Queen* v. *Koonjo Lath*, 11 B. L. R. 19, *per* PHEAR, J. See s. 418, *infra*, as to appeals.

Where a Division Court of the High Court at Allahabad ordered a Magistrate, who had refused to inquire into a charge of murder on the ground that he had no jurisdiction, to inquire into the charge, and the Magistrate inquired into the case and committed the prisoner to the Court of Sessions, by which Court the prisoner was convicted and sentenced to death,—it was held, on the case being referred to a Full Bench of the High Court for confirmation, that in determining whether the sentence should be confirmed, the Full Bench was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction.—*Emp.* v. *Sarmukh Singh*, I. L. R. 2 All. 218.

In the case of *Bhoodoo Jolaha*, 2 C. L. R. 215, where the convict who had been convicted for murder had attempted to commit suicide by cutting his throat, and there was a risk of decapitation taking place if he were hung, the High Court commuted the sentence of death to transportation for life.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges, and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Sessions to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Sessions otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Sessions, the result of such inquiry and the evidence shall be certified to such Court.

As to the last two paragraphs, compare the powers given to High Courts by ss. 375 and 376, *ante*.

The word 'modify' which was used in the former Code, has been omitted in consequence of the decision in the case of *The Emp.* v. *Rama Prema*, I. L. R. 4 Bom., 239, where it was held, that the word did not include the power to enhance a sentence. As to the sentences which may be passed by Assistant Sessions Judges, see s. 31, *ante*.

An Additional Judge is not competent to confirm a decision passed by a District Magistrate in exercise of his special powers conferred under s. 34, *supra*.—*Hunar* v. *Emp.*, Punj. Rec., 1884, p. 98.

With reference to *ss.* 31 and 34, *ante*, the necessity for confirmation of the sentence by the Sessions Judge arises in cases in which the sentence of imprisonment is a sentence of upwards of three years, without including any additional sentences as to fine or whipping.—*In re Shumsher Khan*, I. L. R. 6 Cal. 624.

See *Rongai* v. *Emp.*, I. L. R. 9 Cal. 513, and the notes to s. 34, *supra*.

CHAPTER XXVIII.

OF EXECUTION.

Execution of order passed under section 376.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Where the High Court simply modifies a sentence passed by a Sessions Judge without change of section, and where the High Court passes a new sentence by changing the section, or the punishment section or otherwise, the sentence finally passed shall count, unless specially otherwise directed, from the first day of imprisonment under the original sentence.—*Cal. H. C. C. O., 19th December* 1876: *Assam Gazette*, 1877, p. 24; *Wilkins*, p. 120.

With a view to obviate all mistakes, the date of termination of all terms of imprisonment should be distinctly impressed on the warrants of commitment.—*Ibid*; *Wilkins*, p. 120.

Bengal and Assam.—In Bengal and Assam, the date named by the Sessions Court on its warrant for the execution of a sentence of death shall be not less than fourteen, nor more than twenty-one, days from the date of the issue of such warrant.—*Cal. H. C. C. O., No.* 2, *dated 5th May* 1876: *Assam Gazette*, 1875, p. 355; *Wilkins*, p. 120.

Madras.—By a notification of the Madras Government, dated the 23rd May 1873, it was directed that sentences of death should in no case be carried into execution by officers in charge of jails until the 15th day after the day of receipt from the Court of Session of the warrant issued after confirmation of such sentence by the High Court, and that in cases of the Ganjam, Vizagapatam and Canara Districts, such sentences should not be carried into execution until the 22nd day after the same date.

Bombay.—The following rules regarding the execution of capital sentences have been issued in the Presidency of Bombay:—

(1) When a sentence of death has to be carried into execution, the Sessions Judge shall make arrangements to secure the attendance thereat of a Magistrate of the first class, or Superintendent or Assistant Superintendent of Police, as specified in the Government Circular No. 482, dated the 30th January 1866, from the Judicial Department; and in the warrant which the Sessions Court issues to the jailor, he shall be directed to carry out the execution in the presence of a Magistrate of the first class, or a Superintendent or Assistant Superintendent of Police.

(2) When sending a warrant for execution to the jailor, the Sessions Judge shall at the same time inform the Superintendent of the Jail of having done so.—*Bombay Gazette*, 1879, p. 471.

In the Presidency of Bombay, the following Circular Order was issued to the Police Commissioner and Commissioner in Sind :—

Her Majesty's High Court having ruled that the jailor is the officer in charge of the jail, to whom warrants for the execution of capital sentences should be addressed by the Session Courts, the Hon'ble the Governor in Council is pleased to direct that every execution shall be attended by a Magistrate with full powers, or by a Superintendent or Assistant Superintendent of Police, and that the officer so attending shall countersign the return of execution to the Court of Session.

On the receipt of a confirmation by Her Majesty's High Court of Judicature of a capital sentence, it should be specified in the warrant addressed to the jailor, that the execution is not to be carried out until a day therein named, that shall be at least fourteen days from the date of receipt of the order of confirmation.—*Circular, No.* 382 *of* 1866.

A separate warrant should be issued in the case of each prisoner.—*Cal. H. C. C. O., No.* 6, *dated* 23*rd February* 1870; *Wilkins*, p. 3: *Madras H. C. Pro.*, 13*th March* 1868; *Weir*, p. 40.

For form of warrant on a sentence of death, see Sched. V, No. 35, and for form of warrant after a commutation of sentence, see Sched. V, No. 36.

The Sessions Court has no power to postpone the execution of a sentence of death confirmed by the High Court.—*Mad. H. C. Pro., 4th June* 1879; *Weir*, p. 37.

Sonthal Perguunahs '—See Reg. V of 1893 s. 4 (I).

Postponement of capital sentence on pregnant woman.

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

The High Court is the only judicial tribunal in which the law has vested the powers of postponing the execution of a sentence of death confirmed by it.

Thus, where a Sessions Judge, on learning of the pregnancy of a prisoner whose sentence of death was confirmed by the Madras High Court, directed that the sentence should be suspended until forty days after her delivery, the High Court held, that the order was *ultra vires*, and that, in the exigencies of the situation, he should have suspended the execution of the sentence of death until such time as the order of the High Court could be obtained.—*Mad. H. C. Pro., 4th June* 1879; *Weir*, p. 36.

Execution of sentences of transportation or imprisonment in other cases.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

A sentence of imprisonment ought to commence from the time the sentence is passed.—*In re Krishnanund Bhuttacharjee*, 3 B. L. R. Ap. Cr. 50.

The following rules are in force in Bombay: —

Every Criminal Court when it passes a sentence of imprisonment or transportation, shall endorse on the back of the warrant with which it forwards the convict to the jail, the following particulars: —

Age of convict:

Caste of ditto:

Place of residence of ditto:

Plea of ditto

Opinion of the assessors (where the trial has been conducted with the aid of assessors):

If at the trial any previous conviction has been established, the following particulars shall also be given: —

Name of the offence of which the convict was previously convicted:

Sentence passed upon him.

Date of said sentence:

Name and designation of trying authority.

The above particulars shall be written in the same language in which the warrant itself is written.—*Bombay Gazette*, 1879, p. 471.

The signature of a Magistrate to a warrant should not be affixed by a stamp.—*Subramanya* v. *Queen*, I. L. R. 6 Mad. 396; *C. O., No.* 8, 18*th August* 1882; *Wilkins*, p. 119.

Transportation.—In every case in the Punjab in which a sentence of transportation for life is passed on a woman for the murder of her infant child, the file of the case must, after the expiration of the period allowed for appeal, if it has not been previously submitted, be forwarded to the Registrar of the Chief Court, for submission to the Local Government, with a view to the consideration of the question whether any commutation or reduction of the sentence should be allowed.—*Punjab Gazette*, 1879, Part III, p. 1879.

In all cases in Bengal, where the accused is a soldier or person holding any rank in the army, the warrant for detention or imprisonment shall set forth accurately the rank of the prisoner and the regiment or military department to which he belongs.—*Cal. H. C. C. O., No.* 12 *of* 28*th November* 1873; *Wilkins*, p. 3.

So, in the Punjab, whenever a soldier is committed to jail, whether for trial or under sentence, his military rank shall always be stated in the warrant of commitment, in order that the notice may be given to the military authorities of the day and hour on which the imprisonment of such person will expire, as required by the 33rd clause of the Mutiny Act.—*Smyth*, p. 148.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction of warrant for execution.

The signature of the Magistrate to a warrant should not be affixed by a stamp.—*Subramanya* v. *Queen*, I. L. R. 6 Mad. 396; *C. O., No.* 8, *18th August* 1882; *Wilkins*, p. 119.

The warrant to be sent to the officer in charge of the jail under s. 385 shall set out in full the sentence passed. So far as the sentence is for imprisonment, the jailor will give effect to the terms of the warrant. Such portion of the sentence as directs imprisonment in default of payment of fine will be carried out into effect by the jailor, subject to the provisions of ss. 68 and 69 of the Penal Code. It is not the duty of the jailor to levy a fine, nor can he receive it. The levy of a fine imposed by a Sessions Judge by distress and sale of the property of the accused is to be made under a special warrant issued for that purpose only under s. 386, and not under a duplicate of the warrant sent to the jailor under s. 385.—*C. O., No.* 1 *of 9th February* 1880; *Wilkins*, p. 3.

Sessions Judges are required by s. 386 to furnish Magistrates with copies of their findings and sentences; the copy of the latter should be taken from the record of the trial, and not from the warrant issued to the officer in charge of the jail.—*Cal. H. C. C. O., No.* 12 *of* 21*st February* 1880; *Assam Gazette*, 1880, p. 131.

Warrants of imprisonment directed to Superintendents of District Jails should be in the English language, and warrants directed to the keepers of Sub-divisional lock-ups should issue in the vernacular, except where the sentence is for imprisonment for a longer term than fifteen days, in which case the warrants issued by Sub-divisional authorities should, if possible, be in English.—*Cal. H. C. C. O., No.* 10 *of 27th August* 1873; *Wilkins*, p. 3.

A separate warrant should be issued in case of each prisoner.—*C. O., No.* 6, 23*rd February* 1870; *Wilkins*, p. 3; *Mad. H. C. Pro.*, 13*th March* 1868; *Weir*, p. 46.

In Madras, also, it has been directed that all warrants or orders addressed to officers in charge of jails or magisterial officers shall, wherever practicable, be prepared in the English language (*Mad. H. C. Pro.*, 8*th February* 1867; *Weir*, p. 40), and that all such warrants and orders should be addressed to the officer in charge of the jail and sent directed to him.—*Mad. H. C. Pro.*, 9*th January and* 8*th February* 1867 *and* 13*th March* 1868; *Weir*, p. 40.

A sentence of imprisonment ought to commence from the time the sentence is passed.—*In re Krishnamund Bhattacharya*, 3 B. L. R. Ap. Cr. 50. A definite period of imprisonment must be stated. Thus, an order directed a person "to be imprisoned until he gives security" is bad.—*Mailandi Fakir* v. *Taripulla Pramanik*, I. L. R. 8 Cal. 644.

In the case of *Shamsoonnesa Begum* v. *Love*, I. L. R. 11 Cal. 527 it appeared that a Sheriff's officer delivered over to the officer in charge of the Alipore Jail a judgment-debtor who had been duly committed to the Presidency Jail. It was held that the imprisonment was unlawful.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant, with whom to be lodged.

This section corresponds with s. 304 of Act X of 1872, omitting the provision that, if the jailor should not be in the jail, the warrant should be lodged with his deputy; and that if he should have no deputy, with any officer then being in the jail. See also Act X of 1875, s. 104.

A separate warrant should be issued in the case of each prisoner.—*C. O., No.* 6, 23*rd February* 1870; *Wilkins*, p. 3.

Warrants of imprisonment directed to Superintendents of District Jails should be in the English language, and warrants directed to the keepers of Sub-divisional lock-ups should issue in the vernacular, except where the sentence is for imprisonment for a longer term than fifteen days, in which case the warrants issued by Sub-divisional authorities should, if possible, be in English.—*C. O., No.* 10 *of* 27*th August* 1873; *Wilkins*, p. 3.

Act V of 1871 contains the following provisions as to prisoners in the mofussil:—

Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdiction of the High Courts at Fort William, Madras, and Bombay are competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty or of the Governor-General in Council or of any Local Government.—*S.* 16.

A warrant under the official signature of an officer of such Court or tribunal is sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond the sea in pursuance of the sentence passed upon him.—*S.* 17.

Any officer in charge of a prison doubting the legality of any warrant sent to him for execution, or the competency of the person whose official seal and signature are affixed thereto pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order in the the case such officer and all other public officers shall be guided as to the future disposal of the prisoner. Pending any such reference, the prisoner may be detained in such manner with such restrictions and mitigations as may be specified in the warrant.—*S.* 18.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Warrant for levy of fine.

For form of warrant to levy fine by distress and sale, see Sched. V, No. 37.

Any fee which a Criminal Court orders to be repaid to a complainant under s. 31 of the Court-Fees Act, 1870, shall be regarded as a fine, subject to the provisions of s. 308 (s. 545 of this Code) of the Code of Criminal Procedure.—*Bombay Gazette*, 1879, p. 475.

In the case of *Queen* v. *Jungli Baldar*, 8 B. L. R. Appx. 49, AINSLIE, J., said: "Directly on passing a sentence, which includes a fine leviable by distress, whether that be the only punishment or not, and whether any provision be made for imprisonment on default of payment or not, it shall be lawful for the Magistrate to issue his warrant for the levy of the fine by distress and sale of the goods of the offender—that is, imprisonment and distress may be simultaneously ordered." See *Queen* v. *Madooseodun Dey*, 3 W. R. Cr. 61.

Procedure for the Levy of Fines in Bengal.—A warrant issued under s. 386 of the Code of Criminal Procedure for the levy of a fine should be directed to a Police-officer, and the authority issuing it should set a time for the sale and for the return of the warrant. If no one claims the property distrained, the Police have the power of selling it within the time specified in the warrant, without any previous reference to the Magistrate; if a claimant come forward, then the ownership of the property distrained must be determined by the Magistrate and not by the Police. If at any time subsequent to the return to the warrant, and within the period of six years from the passing of the sentence, the fine or any part thereof remains unpaid (s. 70 of Penal Code), and the Magistrate has, from information gained in any way, reason to think that any moveable property belonging to the offender is within his jurisdiction, he should issue a fresh warrant for the attachment and sale of such property. Such warrant should be made returnable within a certain time.—*Cal. H. C. C. O., No.* 8 *of* 22*nd June* 1864; *Wilkins*, p. 118.

The warrant to be sent to the officer in charge of the jail under s. 385 shall set out in full the sentence passed. So far as the sentence is for imprisonment, the jailor shall give effect to it according to the terms of the warrant. Such portion of the sentence as directs imprisonment in default of payment of fine shall be carried into effect by the jailor subject to the provisions of ss. 68 and 69 of the Penal Code. It is not the duty of the jailor to levy a fine, nor can he be required to receive it. The levy of a fine imposed by a Sessions Judge by distress and sale of the property of the accused is to be made under a special warrant issued for that purpose only under s. 386, and not under a duplicate of the warrant sent to the jailor under s. 385.—*Cal. H. C. C. O., No.* 1 *of* 9*th February* 1880; *Wilkins*, p. 3.

Madras.—The following orders as to fines have been issued by the Madras High Court:—

(1) The chief ministerial officer of every Court will be held responsible that upon the realisation of a fine, to the non-payment of which a sentence of alternative imprisonment has been attached, immediate intimation be given to the jail authorities.—*Mad. H. C. Pro.*, 12*th March* 1867; *Weir*, p. 12.

For procedure when the convict is transferred to another jail, and the fine is realized by the Court which passed the sentence, vide *G. O.*, 19*th April and* 26*th September* 1870; *Weir*, p. 12.

(2) When a fine is imposed in addition to transportation and the whole or part of that fine is afterwards levied, the fact should be notified to the authorities of Port Blair.—*Mad. H. C. Pro.*, 12*th November* 1870; *Weir*, p. 12.

(3) Memoranda showing the amount of all fees, fines, and penalties levied during the month are to be forwarded by every magisterial officer to the District Magistrate on the last day of each month, and a general statement is to be prepared by him and forwarded to the Court of Session. A complete memorandum will then be forwarded by the Court of Session to the High Court.—*Mad. H. C. Pro.*, 21*st December* 1868 *and* 9*th February* 1869. And this memorandum is not superseded by the following proceedings of the High Court, dated 15th December 1874.—*Mad. H. C. Pro.*, 20*th February*, 24*th March and* 10*th August*, 1875; *Weir*, p. 12.

(4) The following rules relate solely to fines imposed by Criminal Courts:—

(*a*) Fines when paid shall be sent with as little delay as possible to the nearest treasury:

(*b*) On the last day of each month, Magistrates of all grades shall transmit to the Sessions Court, and to the officer in charge of the treasury, a statement in the form prescribed in Appendix H, showing the amount of fines actually levied during the month.

(*c*) The Sessions Court shall also, on the last day of each month, transmit a statement, in the like form, to the officer in charge of the treasury:

(*d*) The returns received from the Magistrates shall be compiled in the Sessions Court into a consolidated statement and transmitted to the High Court under flying seal through the officer in charge of the District Treasury and the Accountant-General.—Vide *infra*, para. (5), and also *H. C. Pro.*, 12*th March* 1879:

(*e*) When a sentence of fine is reversed on appeal, an order of refund in the form prescribed in Appendix H shall be granted by the Court reversing the sentence:

(*f*) When a sentence of fine is reversed on a reference to the High Court, the order of refund shall be granted by the Court which referred the proceedings for the orders of the High Court.—*Mad. H. C. Pro.*, 15*th December* 1874; *Weir*, p. 13.

(5) The consolidated statement of fines referred to in cl. (*d*), *supra*, will be passed on to the High Court, after being checked in the Accountant-General's office, the Sessions Courts being called upon to explain any differences discovered between the statements and the treasury accounts.

When a fine is repaid under an order of refund, the treasury officer shall certify in the refund voucher, that the payment has been made after comparison with, and note on, the consolidated statement. In the absence of such certificate, the Accountant-General will not accept charges for refunds of fines.—*Mad. H. C. Pro., 30th April* 1878 *and 15th January* 1879; *Weir*, p. 13.

(6) Whenever a fine or a portion thereof is awarded as compensation, only the nett amount (if any) of the fine, –that is to say, the amount of the fine, *minus* the amount awarded as compensation, – shall be entered in column 4 of the monthly statement of fines.

Column 3 shall show the amount of fine awarded as compensation, and this amount shall be retained in deposit in the revenue treasury, subject to the order of the Court awarding compensation, or of the Court of Appeal or Revision.

The amount so retained shall be paid to the party entitled to it, on such party producing a certificate from the Court which made the award, to the effect that either the sentence and award have been confirmed on appeal, and that no order has been received from a Court of Revision modifying or reversing the order; or that the appeal time has expired, and that no appeal has been preferred, and that no order has been received from a Court of Revision modifying or reversing the order of compensation.

When the original Court is unable to certify whether or not an appeal has actually been preferred, the party entitled to the compensation may apply to the Appellate Court to certify whether or not any appeal has been preferred, and on such application, the Appellate Court shall grant the required certificate. –*Mad. H. C. Pro., 2nd December* 1878; *Weir*, p. 14.

(7) A sentence must impose a specific fine on each prisoner; imposing a fine on the prisoners individually and collectively is illegal; certainty is as essential as in a sentence of imprisonment.—*Mad. H. C. Pro., 11th November* 1869; *Weir*, p. 14.

Bombay.—In Bombay, when any Court recovers a fine, or any portion thereof, inflicted upon a prisoner who is already in jail, or who is liable to be further detained in jail in default of payment of that fine, such Court shall be held responsible for the immediate communication to the jailor of the amount of the fine so recovered. –*Bom. Cir., 7th May* 1881.

Although s. 70 of the Indian Penal Code gives the power to levy a fine at any time within six years, neither that section nor s. 307 (386) of the Criminal Procedure Code requires that the power should be exercised in every case. The law is merely permissive, and not imperative. When efforts have been made to realize a fine by distress and sale, and when the offender has undergone the imprisonment awarded in default of payment of fine, the Court should exercise its discretion, according to the circumstances of each particular case, as to whether, after the release of the prisoner, any further steps should be taken towards the realization of the fine within the period allowed by law. If there is reason to believe that the offender was able to pay, and would not, preferring to undergo imprisonment, the law should be strictly enforced; but if it appears that the fine was not paid for want of means, or that its realization would be ruinous to the offender or his family, it is not desirable that further steps should be taken.—*Smyth*, p. 108.

With reference to this point, the following order, issued in the Bombay Presidency under the corresponding section of Act X of 1872, is of importance :–

The attention of Sessions Judges and Magistrates is called to s. 70 of the Indian Penal Code and s. 307 (380) of the Code of Criminal Procedure, and to the fact that proceedings are seldom taken to recover fines after the imprisonment in default has expired. If, at any time subsequent to the return of the original warrant and within a period of six years from the passing of the sentence, the fine, or any part of it, remains unpaid, and the Court which passed the sentence, from information gained in any way, has reason to think that any moveable property belonging to the offender is within its jurisdiction, it should issue a fresh warrant for the attachment and sale of that property within a specified period, returnable within a certain time.—*Bom. H. C. Cir., No.* 44; *Bombay Gazette*, 1879, p. 475.

Punjab. — In the Punjab, instructions, of which the following is a summary, have been issued relating to the realization of fines: see *Punjab Gazette*, 1879, pp. 92–99.

Fines should never be excessive with reference to the means of the offender, and the amount imposed should always be distinctly explained to the person sentenced. All fines are leviable by distress within six years, or during the term of imprisonment of the offender, if this be more than six years: but this provision of the law is permissive, and not imperative, and the Court should exercise its discretion as to whether, after the release of the offender, any further steps should be taken towards the realization of the fine, and should not proceed if it appears that the non-payment of the fine was owing to poverty and not to contumacy.

Every Court should keep a separate register of fines in the vernacular in the form marked A, and a general register of fines should be kept at the head-quarters of each district.

If at the time of sentence the prisoner tenders the whole or part of the fine, the amount must be received and a receipt given in the form marked E. If paid in full, an entry to that effect must be made on the file of the case.

When fine is the only punishment imposed for a bailable offence, the offender may be allowed a period of grace, not exceeding fourteen days, so as to admit of his making arrangements for the payment of the fine. In default of payment, steps must be taken for imprisonment or realization, as the case may require.

If the fine be not paid in full at the time of sentence or within the period of grace allowed, the Court imposing the fine should proceed as follows :–

In Sessions Courts.

(a) If the fine was imposed by a Court of Session, the Judge should, in the absence of any special directions to the contrary in the law under which the fine was imposed, issue, under s. 307 (386) of the Criminal Procedure Code, a warrant in the annexed form (Appendix B) to the Magistrate of the District for the levy of the amount due by distress and sale of the offender's moveable property.

In cases in which the whole or a portion of the fine has been awarded in compensation or reward, this should be distinctly noted in the warrant. The Magistrate of the District to whom the warrant is addressed will, on receipt, cause the particulars to be entered in the proper page of the general fine register, and the District Registrar of Fines will then be responsible that the proper steps, as hereinafter provided, are taken for the realization of the fine.

(*b*) If the fine was imposed by a Magistrate, and no period of grace has been allowed, a separate written order should, in the absence of any special provision of law to the contrary, be prepared and signed by the Magistrate and sealed with the seal of his Court. This order should be in the annexed form (Appendix C) and should be addressed to the Court Inspector, or Naib Court Inspector, or other official discharging the duties of Court Inspector, where the Court is provided with such an official, otherwise to the officer in charge of the Police station within whose limits the person sentenced resides.

In Magistrates Courts a writ ten order to issue to the Police to demand payment

A copy of the order should also be given to the person sentenced, and he should be informed that, in default of voluntary payment within the period named therein, a warrant to levy the amount by distress will issue The order, it will be observed, is returnable after fourteen days. If, during that period, the fine is paid in full to the Police, the order with an endorsement showing the date of realization and also the date of payment into the treasury with the number of the treasury receipt will be returned forthwith to the Magistrate, who, when the offender is in prison, will at once notify under his hand and seal the payment to the Superintendent of the Jail. If, on the other hand, the fine is not paid within fourteen days, the warrant will be returned with an endorsement certifying what has been done under it. In either case the work of the Police is finished.

Payments certified by the Police will be entered at once in the appropriate columns of the Magistrate's fine register, and the certificate will be attached to the file of the case.

Where a period of grace has been allowed, as provided in para 8, the Magistrate should, after the expiry of that period, proceed at once to issue a warrant for the distress and sale of the offender's moveable property, instead of issuing an order to the Police.

When an order to the Police has been issued under the preceding paragraph, and a return has been received thereto that the fine has not been fully realized by the efforts of the Police, a warrant should be issued (Appendix D) for the levy of the amount still due by distress and sale of the offender's moveable property The warrant, should, except when issued by a tahsildar for execution in his own tahsil, or as provided by the next paragraph, be addressed to the tahsildar within whose jurisdiction the offender resides. Warrants for levy of fines received by the Magistrate of the District should also be executed through the tahsildars in the same manner as warrants issued by Magistrates.

Warrants issued for execution in cantonments must be executed by the officers of the Cantonment Magistrate's Court

Formalities are to be observed in attachment, sale, and adjudicating upon objections similar to those in force in the execution of civil decrees. Agricultural instruments should not ordinarily be attached.

When an objector comes forward, he should be warned of the penalties contained in s. 207 of the Penal Code against a fraudulent claim to property to prevent its seizure in satisfaction of fine, and the objection should then be inquired into and disposed of either by admitting the claim or referring the objector to a civil action if his claim seems groundless

The officer conducting the sale of attached property is entitled to the following commission :—

If the sale-proceeds do not exceed Rs 5,000, at 5 per cent

If the sale proceeds exceed Rs 5,000, at 5 per cent. on Rs 5,000, and at ½ per cent on the remainder.

Fines realized by tahsildars are to be reported at once to the Magistrate executing the sentence

All Magistrates and officers in charge of Police stations, tahsildars, and Superintendents of Jails must receive fines when tendered, and give receipts in the form marked E.

Fines may be paid either in the district in which the offender was sentenced, or in the district to which he has been transferred to undergo his imprisonment Precise directions are given as to how sums received by judicial officers and the Police in payment of fines are to be disposed of

Directions are also given as to the observance of the orders of the account department, the duties of the District Registrar of Fines, the returns to be submitted to the Sessions Judge, and the duties of Superintendents of Jails on receiving intimation of the payment of fines

A careful observance of the foregoing directions will result in the following checks :—

I Every fine imposed by Courts exercising jurisdiction in the district will be entered in the fine register.

II When the fine has been paid into Court, the fact will appear in the proper register under the hand of the Judge or Magistrate and on the file of the case.

III When the Police have realized a fine in whole or in part, a certificate of what has been done will be with the record, and the amount realized will appear in the fine register.

IV. When the Police have not realized the fine, this fact will appear from the record, and the subsequent proceedings of the tahsildar will show what steps have been taken, for forcible levy.

V. Each realization will be checked by the District Registrar of Fines

VI. The realization of each Court will be checked and certified once a month by the presiding officer of the Court, or in the case of fines imposed by the Sessions Court, by the Magistrate of the District.

VII An inspection of the district register of fines will always at once show every stage of each transaction, and if thought proper, quarterly, half yearly or annual audits can be held of the whole fine transactions of the period by comparing each entry of the register with the record of the case and the credit in the treasury. The officer in charge of the fine department should occasionally test the correctness of the entries in the district fine register by comparing some of them with the records of the cases to which they relate and with the credits in the treasury.

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

See notes to preceding section.

Suspension of execution of sentence of imprisonment.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond ; and in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

Under this section, the Court, in a case where an offender has been sentenced to fine only, and to imprisonment in default of payment of fine, has power to suspend the execution of the sentence of imprisonment and release him on his furnishing security. In the event of the fine not being paid, the Court may direct the sentence of imprisonment to be carried into effect. The provisions of the section are now.

Form of Process, Sentence and Order.—(*a*) In every sentence or order made by a Criminal Court, the jurisdiction of the Judge or Magistrate making it should distinctly appear on the face thereof.*

(*b*) In every process and every sentence or order (of whatever description) issued by a Judicial Officer, for whatever purpose it may be issued or made, the name of the District and of the Court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such manner that it may be easily read.

(*c*) Judicial Officers shall in all cases take care to sign their names distinctly and legibly.—*C. O., No. 4 of 13th March* 1876 ; *Wilkins*, p. 119.

(*d*) At the request of the Government of Bengal, all Judicial Officers are reminded that, in the case of all documents which are required by law to be *signed*, the impression of a stamp bearing the officer's name is insufficient and illegal.—*C. O., No. 8 of 18th August* 1882 ; *Wilkins*, p. 119. See *Subramanya v. Queen*, I. L. R. 6 Mad. 396.

Section 69 of the Penal Code provides :—

If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

See *Chunder Coomar Mitter* v. *Modhoosoodun Dey*, 9 W. R. Cr. 50.

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Under s. 394, *post*, a sentence of whipping must not be imposed unless the offender is in a fit state of health, and under s. 393 cannot be inflicted by instalments.

* When the law empowers Magistrates of a particular grade to do a particular act or make a certain order, it should always appear on the proceedings that the Magistrate making the order or doing the act is a Magistrate who had jurisdiction to do it.—(22 W. R. Cr. R. 30.)

Sentences of whipping as a sole punishment in the North-Western Provinces ordered by any Magistrate, are to be carried out, at the Court-house of the Magistrate of the District, in the presence of the Magistrate or medical officer at a fixed time at the close of each day. The flogging is to be inflicted with as much privacy as may be practicable.—*N.-W. P. Gazette*, 1878, p. 718.

Section 1 of Act VI of 1864 (the Whipping Act) directs that, in addition to the punishments described in s. 53 of the Penal Code, offenders are also liable to whipping under the provisions of the said Code, and it has been declared under the authority vested in the Lieutenant-Governor by s. 392 of Act X of 1882, that this punishment "shall, in the case of an adult, be inflicted on the breech with a ratan* not exceeding half an inch in diameter." The Government further enjoins that "on all occasions precautions should be taken to prevent the blows from falling on any other part of the person."—*Cal. H. C. C. O., No. 2 of 8th April 1864*; *Wilkins*, p. 148.

The following rules are in force in the Punjab :—

The triangle should be boarded on the side next the offender, so as to prevent the possibility of the ratan curling round and touching the front or any other part of his person.

The punishment is never to be inflicted in public, or in front of the cutcherry, but always within some walled enclosure, either the jail, lock-up, treasury or any other convenient place, and in presence of a Magistrate, and, when practicable, of a medical officer. Superintendents of Jails have been invested by the Local Government with powers of a Magistrate of the third class with a view to sentences of whipping being executed in their presence.—*Smyth*, p. 115.

Execution of sentence of whipping, in addition to imprisonment.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

The following rule is in force in Bombay :—

In returns to writs in cases wherein the punishment of whipping has been awarded in addition to imprisonment, it should be certified whether the whipping has been actually inflicted.—*Bombay Gazette*, 1879, pp. 471, 475.

When a sentence has been carried into effect in the presence of the Magistrate who passed it, it is the duty of the Magistrate to record the fact.—*Mad. H. C. Pro., 15th July 1864*; *Weir*, p. 47.

In the Punjab, all Superintendents of Jails are invested with the powers of a Magistrate of the third class, with a view to sentences of whipping being executed in their presence.—*Punjab Gazette*, 1873, p. 76.

Mode of inflicting punishment.

392. In the case of a person of, or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half-an-inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Limit of number of stripes.

In no case shall such punishment exceed thirty stripes.

See note to s. 390, *supra*.

Section 5 of the Whipping Act (VI of 1864) provides, that any juvenile offender who commits an offence which is not by the Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may be for such offence liable under that Code.

By the term "juvenile offender," in s. 5 of the Whipping Act, is meant an offender under 16 years of age.—*Emp.* v. *Din Ali*, I. L. R., 6 All. 482; see *Reg.* v. *Muhammad Ali*, 9 Bom. H. C. R. Cr. 9.

Not to be executed by instalments. Exemptions.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely) :—

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

* Circular of the Government of Bengal to all Commissioners, No. 1329, dated 20th February 1864.

Whipping not to be inflicted if offender not in fit state of health.

394. The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Stay of execution

If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure if punishment cannot be inflicted under section 394

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender, in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

The former Code did not specify any term for which imprisonment might be awarded in lieu of whipping, or of so much of the sentence of whipping as was not carried out.

The word "imprisonment" in these sections means a substantive sentence of imprisonment and the Court has no power under the section to revise its sentence of whipping by inflicting a fine — *Emp. v. Shsodia*, I. L. R. 11 All. 308.

Execution of sentences on escaped convicts.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

See s. 224 of the Penal Code as to punishments for escape or attempt to escape.

Sentence on offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall

commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced :

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section which have been clearly proved against him. On conviction on each of these separate charges, a separate sentence on each conviction should be passed, with a direction under this section that such shall take effect on the expiry of the next prior sentence.—*Reg.* v. *Sobrai Gowallah*, 20 W. R. Cr. 70.

The section specially fixes the time from which the subsequent sentence shall commence. Sentences of imprisonment in other cases ought to commence from the time of their being passed.—*In re Krishnanund Bhuttacharjee*, 3 B. L. R. Ap Cr. 50.

When a prisoner has been committed to jail under two separate warrants, the sentence in the one to take effect from the expiry of the sentence in the other; the date of such second sentence shall, in the event of the first sentence being remitted on appeal, be presumed to take effect from the date on which he was committed to jail under the first or original sentence.—*C. O., No.* 1 *of 9th January* 1882 ; *Wilkins*, p. 120.

Saving as to sections 396 and 397.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of fine is annexed to a substantive sentence of imprisonment or to a sentence of transportation or penal servitude for an offence punishable with imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.—[Act X of 1886, s. 10.]

Confinement of youthful offenders in reformatories.

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

This section is a general section which empowers any Criminal Court to send any sentenced person (*of either sex*) under 16 years of age to a reformatory under the Reformatory Schools Act (V of 1876) which is a special Act dealing with Reformatory Schools for male youthful offenders. First class Magistrates and not Magistrates of a lower grade have power to send youthful offenders to a reformatory. A Full Bench in Madras has held that an order by a second class Magistrate directing a boy to be sent to a reformatory under s. 399 of the Code is illegal.—*Emp.* v. *Madasami*, I. L. R. 12 Mad. 94.

The following provisions of Act V of 1876 should be noted :—

Whenever any youthful offender is sentenced to transportation or imprisonment, and is in the judgment of the Court by which he is sentenced (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, the Court may direct that, instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall be not less than two years and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force. The powers so conferred on the Court shall be exercised only by (*a*) the High Court ; (*b*) the Court of Session ; (*c*) a Magistrate of the first class ; and (*d*) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras and Bombay.—*S.* 7.

Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such jail is situate; and the Magistrate, if he thinks the offender (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force. In this section, "Magistrate" means in the towns of Calcutta, Madras and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the first class.—*S.* 8.

Every youthful offender so directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.—*S.* 9.

For the form of warrant for detention in a Reformatory in force in Bengal, see *Cal. H. C. C. O., No. 6 of 29th June* 1878; *Wilkins*, p. 76.

The part of the Poona City Jail set apart for the confinement of juvenile offenders was declared to be a Reformatory under s. 318 of Act X of 1872.—*Bombay Gazette*, 1873, p. 98.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of Warrants.—Every warrant should, after the execution of the sentence, be returned to the Court by which it was issued, with an endorsement certifying the manner in which such sentence has been carried into execution.

In the case of a sentence, both for corporal punishment and imprisonment, the execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case cannot be considered to be completely executed until the prisoner has undergone the sentence of imprisonment passed upon him, the officer in charge of the jail should retain the warrant until the expiration of the term of imprisonment, or, if the prisoner dies during the course of such term, return it with an endorsement to this effect.—*Cal. H. C. C. O., No. 34 of 10th June* 1804; *Wilkins*, p. 120.

The following rules are in force in Bombay:—

On the receipt of a writ from the High Court, the date of receipt shall be at once endorsed thereon; and when the return is made, the reason shall be stated for any delay that may have occurred beyond the period prescribed for the return.

In the event of the absence of a Sessions Judge from a district where there is not an Assistant Sessions Judge, the officer who, under the provisions of s. 35 of Act XIV of 1869, assumes charge of the District Court, shall take charge of the current duties of the Sessions Judge, in so far that he shall transmit writs of the High Court to the Magistrates, forward proceedings in cases called for by the High Court, submit the usual criminal returns, and receive appeals, petitions, and committed cases.

It is necessary that returns should be made to all writs issuing from the High Court. The return shall be made in the form of an endorsement on the Court certifying its execution, or the reasons which may have prevented its execution.—*Bombay Gazette*, 1879, pp. 471, 475.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

401. When any person has been sentenced to punishment for an offence, the Governor-General in Council, or the Local Government, may at any time without conditions, or upon any condition which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

"If any condition on which a sentence has been suspended or omitted is, in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence. The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted or one independent of his will."—[Act X of 1886, s. 11.]

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

The third and fourth paragraphs have been substituted by Act X of 1886, s. 11, for the third paragraph of the section as it orginally stood.

Release-orders not to be Telegraphed to Jails.—Judicial officers are prohibited from sending by telegraph orders to officers in charge of jails for the release of prisoners in their custody.—*Cal. H. C. C. O., No.* 27 *of* 20*th July* 1878; *Wilkins*, p. 122.

Power to commute punishment.

402. The Governor-General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

Act X of 1872, s. 322; see also ss. 54 and 55 of the Penal Code. After the words 'rigorous imprisonment,' the words 'for a term not exceeding that to which he might have been sentenced' have been added; and after the words 'simple imprisonment,' the words 'for a like term' have been added. The reason for this alteration was that, under s. 322 of Act X of 1872, it was supposed that the Government had the power to commute a sentence of transportation, for instance, to a sentence of imprisonment exceeding that for which the offender was liable under the law under which he was convicted.

The following rule is in force in the Punjab :—

When a Sessions Judge or Magistrate passing sentence sends up a case to Government for remission or commutation of punishment under s. 322 (402) of the Code of Criminal Procedure, he should submit the application with his proceedings through the Chief Court, otherwise the Court may hear in appeal a case in which Government has remitted or commuted the punishment without knowing of such remission or commutation.—*Smyth*, p. 117.

Under s. 23 of the Prisoners Act, V of 1871, the Governor-General in Council may grant to any convict sentenced to be kept in penal servitude a license to be at large within British India or in such part thereof as in such license is expressed, and upon such conditions as to the Governor-General in Council may seem fit. The Governor-General in Council may at any time revoke or alter such license. See ss. 24 and 25 of the same Act.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

403. A person who has once been tried by a Court of competent jurisdiction for an offence convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not a afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(*f*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C may afterwards be charged with, and tried for, dacoity on the same facts. (See *Varankutti* v. *Chiyamu*, I. L. R. 7 Mad. 557.)

The acquittal or conviction in order to amount to an effectual defence to the charge, must be by a Court of competent jurisdiction. See s. 203, *supra*.

A Magistrate may dismiss a complaint if, after examining the complainant and considering the result of the investigation under s. 202, *supra*, there is in his judgment no sufficient ground for proceeding (s. 203, *supra*), or, in inquiries into cases triable by Courts of Session or High Court, discharge an accused if, after taking evidence under s. 208, paras. 1 and 2, and examining the accused, he finds there are not sufficient grounds for committing him for trial.—*S.* 209.

Where a conviction has been had on one or more of several charges, the withdrawal of the remaining charges under s. 240 has the effect of an acquittal on such charges unless the conviction be set aside (s. 240). See *Luchi Behara* v. *Nityanund Dass*, 19 W. R. Cr. 55. Under s. 247, if a summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or on any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate *shall* acquit the accused unless he thinks proper to adjourn the case; and under s. 248, if a complainant at any time before a final order is passed in a summons-case satisfies the Magistrate that there are good grounds for withdrawing his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

In trials before a jury where the jury is discharged under s. 305, and the Judge does not consider the accused should be re-tried, he may make an entry to that effect, and such entry operates as an acquittal.—*S.* 308, *supra*.

Any public prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution, and upon such withdrawal, (*a*) if it is made before a charge has been framed, the accused shall be discharged, (*b*) if it is made after a charge has been framed or when under this Code no charge is required, he shall be acquitted.—*S.* 494, *post*.

As to the effect of the Advocate-General withdrawing from the prosecution, see s. 333, *supra*, and s. 146 of Act X of 1875, quoted in the note to s. 194, *supra*. It is to be observed that s. 146 of Act X of 1875 has not, so far as it relates to informations by the Advocate-General, been repealed.—*Sched. I* (*b*), *post*.

The composition of an offence under s. 345 has the effect of an acquittal. A discharge under s. 253 does not amount to an acquittal. A dismissal of a complaint after a charge has been framed amounts to an acquittal (*In re Jadubar Mookerjee*, 5 C. L. R. 339); but where a charge has been drawn up, the Magistrate ought to record an acquittal (s. 220, *supra*). In the case of *Emp.* v. *Gurdu*, I. L. R. 3 All. 129, where a Magistrate tried and acquitted a person accused of theft without

preparing in writing a charge against him, it was held by PEARSON, J., that the omission did not invalidate the order of acquittal and render the order equivalent merely to an order of discharge.

To render a former acquittal or conviction a defence on a second trial, the offence must be the same.—*Queen* v. *Dwarkanath Dutt*, 7 W. R. Cr. 15: *Kaplan* v. *Smith*, 7 B. L. R. Appx. 25 (S. C.) 16 W. R. Cr. 3. See *Sarwar* v. *Emp.*, Punj. Rec., 1884, p. 52.

Where a prisoner is released by the Court of Sessions on the ground that the proceedings had in his case were illegal and irregular, there is no bar to his being subsequently tried and convicted of the same offence.—*Queen* v. *Wahed Ali*, 13 W. R. Cr. 42.

A Court before which a second trial is held has nothing to do with the evidence given in the former trial, except for the purpose of ascertaining whether the offence in the two trials is the same. —*Queen* v. *Dwarkanath Dutt*, 7 W. R. Cr. 15 *Queen* v. *Mussamut Hwarya*, 22 W. R. Cr. 14.

A person who has been tried for the offence of assault under s. 352 of the Penal Code, and discharged, cannot again on the same complaint be tried for causing hurt.—*Kaplan* v. *Smith*, 7 B. L. R. Appx. 25: (S. C.) 16 W. R. Cr. 3: see *Queen* v. *Dwarkanath Dutt*, 7. W. R. Cr. Rul. 15.

The distinction between an acquittal and a discharge shown in ss. 215 and 220 [s. 253 (para. 1) and s. 258] holds good in all warrant-cases tried summarily, the only difference being that, under the ordinary procedure, the charge must be prepared in writing, and under summary procedure must be made verbally. A discharge in summary trial no more bars the revival of a prosecution for the same offence than it does in a case conducted under the rules of ordinary procedure.—*Smyth*, p. 101.

In the case of *Veerankutti* v. *Chiyamu*, I. L. R. 7 Mad. 557, upon a charge of dacoity, the Magistrate having split up the charge, convicted the accused of rioting, using criminal force, and misappropriating the property of a deceased person. On appeal, the Sessions Court reversed the conviction, holding that the offence, if any, was dacoity. Thereupon a fresh complaint of dacoity was lodged, based upon the same facts before another Magistrate. It was held, having regard to cl. 4 and Illustration (*g*) to this section, that the judgment of the Sessions Court was a bar to further proceedings.

In a subsequent case, however, where E, being charged with theft and mischief in respect of certain branches of a tree, was tried by a Subordinate Magistrate on the charge of mischief, and acquitted on the ground that, as against the complainant, E had title to the tree, on the application of the complainant the District Magistrate directed further inquiry to be made, and on a reference to the Court of Session, the Sessions Judge held that, as no inquiry into the charge of theft had been had, the order was legal. The High Court held that the District Magistrate had no power to pass the order, and that a trial on the charge of theft was barred by this section of the Code.—*Emp.* v. *Keramreddi*, I. L. R. 8 Mad. 296.

There can be no acquittal unless the Court before which the accused is tried has jurisdiction.—*Ram Reddi* v. *Shesha Reddi*, I. L. R. 3 Mad. 48. Where an offence is tried without jurisdiction, the proceedings are void under s. 530, *post*, and the offender, if acquitted, is liable to be re-tried under this section. It is not necessary for the High Court to upset the acquittal before the re-trial can be had.—*Emp* v. *Hussein Garbu*, I. L. R. 8 Bom. 307. If the Court has jurisdiction, there can be no re-trial, unless the acquittal has been set aside by the High Court on appeal by the Local Government.—*Emp.* v. *Gustadji Burjorji*, I. L. R. 10 Bom. 181.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie.

See s. 537, *infra*.

Limitation.—Under the Limitation Act, XV of 1877, an appeal from a sentence of death by a Sessions Judge must be presented within seven days from the date of the sentence (Sched. II, Art. 150); from a judgment of acquittal, six months from the date of the judgment appealed against (Sched. II, Art. 157). See *Emp.* v. *Jyadullu*, I. L. R. 2 Cal. 436. An appeal to any other Court than a High Court must be presented within thirty days from the date of the sentence or order appealed against (Sched. II, Art. 154); and, except in cases provided for by Arts. 150 and 157, sixty days from the sentence or order appealed against. If the period of limitation prescribed for any appeal expires on a day when the Court is closed, it may be presented on the day that the Court re-opens. And any appeal may be admitted after the period of limitation expires, when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period.—*Act XV of* 1877, *s* 5. In computing the period of limitation prescribed for an appeal, the day from which such period is to be reckoned, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the sentence or order appealed against are to be excluded.—*Ib.*, *s.* 12. See *Ghamman*, Punj. Rec., 1888, p. 9.

Burma.—For the purposes of the Indian Limitation Act, appeals and applications to the Special Court shall be deemed to be respectively appeals and applications to a High Court under the Code of Criminal Procedure.—*Act XI of* 1889, *s.* 71.

The High Court cannot, in the exercise of its powers of extraordinary jurisdiction in criminal matters, interfere unless all other remedies provided by law have been previously exhausted. Thus, persons convicted by a Magistrate who have a right of appeal to the Sessions Court, cannot move the High Court under cl. 15 of the Charter without having first exercised that right of appeal.—*Per* AINSLIE and MCDONELL, JJ., *Dhenonath Ghattack* v. *Rajcoomar Singh*, I. L. R. 3 Cal. 573. See also *In re Poona Churn Pal*, I. L. R. 7 Cal. 447.

In the High Court under the Letters Patent where two Judges sitting on appeal differ, the opinion of the Senior Judge must prevail under s. 36 of the Letters Patent.—*Queen* v. *Kazim Thakoor*, 2 B. L. R. (F. B.) 25.

The High Court has no power either by way of appeal or revision to interfere with a sentence passed by the Superintendent of Tributary Mehals when exercising jurisdiction over offences committed in Mohurbunj, a place not situated within the limits of British India.—*Emp.* v. *Hurrokute*, I. L. R. 9 Cal. 288: or in the tributory Mehal of Kheonjur.—*In re Bichitranund Dass*, I. L. R. 16 Cal. 667. See *Emp.* v. *Keshub Mahajan*, I. L. R. 8 Cal. 985: and *Hursee Mahaputro* v. *Dinubhumtu Patro*, I. L. R. 7 Cal. 523.

Section 27 of the Letters Patent makes the High Court a "Court of Appeal from the Criminal Courts of the Bengal Division of the Presidency of Fort William and from all other Courts subject to its superintendence," and s. 28 makes it "a Court of Reference and Revision from the Criminal Courts subject to its Appellate jurisdiction," and in the case just quoted, the High Court held the words "Criminal Courts" to mean Courts established in and for British India.

A petition of appeal in Madras may be presented by any person authorized by the appellant to present it.—*In re Subba Attala*, I. L. R. 1. Mad. 304; *Weir*, p. 3. See s. 419.

In cases in which the law allows no appeal, the High Court as a Court of Revision will not, except on very exceptional grounds, exercise the powers of an Appellate Court; but where such exceptional grounds exist, as where the conviction is not in any degree supported by the evidence, the High Court will exercise its discretion under s. 439, *infra*, and reverse the conviction and sentence.—*Emp.* v. *Sheikh Sahab Badrudin*, I. L. R. 8 Bom. 197.

In the case of *Queen* v. *Chandra Jogi*, 9 B. L. R. 6, it was held that a Judge of the High Court, sitting alone on the Appellate Side of the High Court, had power to hear and dispose of appeals in criminal cases. See the question discussed in the case of *Abdul Sobhan*, I. L. R. 8 Cal. 63, pp. 67—70.

405. Any person whose application under section 89, for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property.

See *In re Michell*, 1. C. L. R. 339.
Section 89, *supra*, deals with the restoration of attached property.

406. Any person required by a Magistrate other than the District Magistrate or a Presidency Magistrate to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from order requiring security for good behaviour.

No appeal lies from an order passed by a District Judge under s. 123, and, on reference by the Magistrate, confirmed by the Sessions Judge, requiring a person to be detained in prison until he should provide security for his good behaviour. — *Chand Khan* v. *Emp.*, I. L. R. 9 Cal. 878. The order is not a conviction on a trial by a Sessions Judge (s. 410), nor a sentence of a Magistrate subject to the confirmation of the Sessions Judge [s. 408 (*a*)].

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or, if already presented to the District Magistrate, shall be transferred

Transfer of appeals to first class Magistrate.

to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

If any Magistrate not being empowered in this behalf decides an appeal, his proceedings shall be void.—*Section 530 (f), infra.*

Magistrates of the first class in charge of divisions of districts in the Province of Sind were invested with powers to hear appeals from convictions by Magistrates of the second and third classes (s. 260) in their respective divisions, subject to such exceptions as might be made and notified in particular cases.—*Bombay Gazette*, 1873, p. 255.

Section 349 is as follows:—"Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under s. 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate."

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and re-call and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under ss. 32 and 33.

A person against whom an order awarding compensation has been passed under s. 22 of the Cattle Trespass Act (I of 1871) is not a "person convicted on a trial," and no appeal therefore lies under this section.—*Emp.* v. *Raya Lakhma*, I. L. R. 10 Bom. 230: *Dhiku* v. *Deno Nath Deb*, I. L. R. 15 Cal. 712.

No appeal lies to a District Magistrate from the decision of an Assistant Magistrate with second class powers and two or more Honorary Magistrates in a case tried summarily, for any Bench of two or more Honorary Magistrates sitting with a salaried Magistrate exercising not less than second class powers is vested with first class powers.—*Government Order, para.* 1, *Calcutta Gazette*, 1873, p. 17, and *Government Orders, dated 31st March* 882. See *In re Havaldar Roy*, I. L. R. 9 Cal. 90: (S. C.) 11 C. L. R. 423, and s. 273, *ante*.

An appeal lies under this section from a conviction by a Bench of Magistrates invested with second or third class powers.—*Emp.* v. *Narayanasami*, I. L. R. 9 Mad. 36. See s. 414, *post*.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session.

(*b*) any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

"District Magistrate" includes a District Magistrate invested with powers under s. 30, *ante*.—*Per* FIELD, J., *Rongai* v. *Emp.*, I. L. R. 9 Cal. 513, p. 516: (S. C.) 12 C. L. R. 500.

In the case of *Emp.* v. *Nidua*, I. L. R. 2 All. 53, STUART, C. J., however, doubted whether, where a person had been convicted by a Deputy Commissioner invested with powers under s. 30 of Act X of 1872, and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to whom such Deputy Commissioner was subordinate, and such sentence had been confirmed accordingly, an appeal lay to the High Court against such conviction and sentence. See *Rongai* v. *Emp.*, I. L. R. 9 Cal. 513: (S. C.) 12 C. L. R. 500.

No appeal lies to a District Magistrate from the decision of an Assistant Magistrate with second class powers and two or more Honorary Magistrates in a case tried summarily, for any Bench of two or more Honorary Magistrates sitting with a salaried Magistrate exercising not less than second class powers is vested with first class powers.—*Government Order, para.* 1, *Calcutta Gazette*, 1873, p. 17, and *Government Orders, dated 31st March* 1882. See *In re Havaldar Roy*, I. L. R. 9 Cal. 90: (S. C.) 11 C. L. R. 423, and s. 273, *ante*.

An appeal lies under this section from a conviction by a Bench of Magistrates invested with second or third class powers.—*Emp.* v. *Narayanasami*, I. L. R. 9 Mad. 36. See s. 414, *post*.

An order under s. 123, *ante*, requiring a person to give security for good behaviour and directing him to be detained until such security has been given is not a conviction, and no appeal lies.—*Chand Khan* v. *Emp.*, I. L. R. 9 Cal. 878.

European British Subjects.—The right of direct appeal under this section is given to European British subjects only. *In re Solomon*, I. L. R. 14 Bom. 109. Accordingly a person not being a European British subject who is tried by a District Magistrate jointly with a European British subject cannot claim under s. 452, *post*, the right of appeal to the High Court.—*Ibid.*

Sonthal Pergunnahs.—See Reg. V of 1893, 4 (III).

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions' Judge or by an Additional or Joint Sessions Judge.

Appeals to Court of Session how heard.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court.

Appeal from sentence of Court of Session.

Section 413, *post*, provides that "notwithstanding anything hereinbefore contained there shall be no appeal by a convicted person in cases in which a Court of Session or the District Judge or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only."

The aggregate of the sentences passed under s. 35 in a case of simultaneous conviction for several offences must be considered a single sentence for the purpose of confirmation or appeal.—*Reg.* v. *Rama Bhirgowda*, I. L. R. 1 Bom. 223. See also *In re Golam Abas*, 12 Bom. 147 : *Emp.* v. *Haradhan Tamuli*, 3 C. L. R. 511.

Where an Assistant Magistrate decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge on appeal ordered the evidence of those witnesses to be taken by the Assistant Magistrate, and on the depositions being returned to him, proceeded to deal with the case, and confirmed the judgment and sentence passed by the Assistant Magistrate. It was held, that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that an appeal lay from it to the High Court upon the merits.—*Queen* v. *Mohesh Chunder Chuttopadhia*, 2 W. R. Cr. 13 See *Queen* v. *Poorno Chunder Doss*, 8 W. R. Cr. 59.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the Hight Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Appeal from sentence of Presidency Magistrate.

The words 'to imprisonment for a term exceeding six months or to fine exceeding Rs 200,' are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent on the fine not being paid.—*In re Jotharam Davay*, I. L. R. 2 Mad. 30.

Unless there is a substantive sentence of imprisonment exceeding six months or of fine exceeding Rs. 200 there is no appeal from a sentence of a Presidency Magistrate under this section. There is accordingly no appeal from a sentence of six months' imprisonment and a fine of Rs. 200 or in default a further period of three months' imprisonment —*Schein* v. *Emp.*, I. L. R. 16 Cal. 799. See *Ram Chunder Shaw* v. *Emp.*, I. L. R. 6 Cal. 575.

412. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

In the case of *Emp.* v. *Jafar M. Talab*, I. L. R. 5 Bom. 85, it was held, that where a person had on his own plea, been convicted on a trial by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal, and therefore also the sentence, did not lie according to the provisions of s. 167 of Act IV of 1877, albeit that the Magistrate had sentenced the person to imprisonment for a term exceeding six months or to a fine exceeding 200 rupees

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

Upper Burma.—In Upper Burma, except the Shan States, Reg. V. of 1892, Sched. (XI) provides that, notwithstanding anything in the schedule to that Regulation, or in this Code, an appeal shall not lie in any case in which a District Magistrate or Court of Session passes a sentence for a term not exceeding six months or of fine not exceeding 500 rupees, or of whipping, or of all or any of those punishments combined.

Where several persons are tried together, and some of them are sentenced to undergo rigorous imprisonment for a month, and others for a greater period, a Sessions Judge has no power to deal in appeal with the cases of those sentenced to the less imprisonment. The test as to whether a case is appealable is not the maximum sentence passed in it.—*Reg.* v. *Kalubhai Meghabhai*, 7 Bom. H. C. R. Cr. 35. Where a person is charged with two separate offences in one trial, the amount of the whole punishment must be regarded as one sentence for the purpose of determining whether an appeal lies.—*Emp.* v. *Haradhan Tamuli*, 3 C. L. R. 511. See *Reg.* v. *Rama Bhivgivoda*, I. L. R. 1 Bom. 228.

European British Subjects.—See ss. 408 and 416.

Santhal Pergunnahs.—See Reg. V of 1893, s. 4, (III).

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

No appeal from certain summary convictions

Upper Burma.—In Upper Burma, except the Shan States, Reg. V. of 1892, Sched. (XI) provides that, notwithstanding anything in the schedule to that Regulation, or in this Code, an appeal shall not lie in any case in which a District Magistrate or Court of Session passes a sentence for a term not exceeding six months or of fine not exceeding 500 rupees, or of whipping, or of all or any of those punishments combined.

Section 260 applies only to District Magistrates, Magistrates of the first class, or a Bench having the powers of a Magistrate of the first class. Accordingly, an appeal lies, under s. 407, *supra*, against a conviction by a Bench of Magistrates invested with second or third class powers.—*Emp.* v. *Narayanasami*, I. L. R. 9 Mad. 36.

A Bench consisting of two or more Honorary Magistrates and a Stipendiary Magistrate with not less than second class powers is vested with first class powers. See *In re Havaldar Roy*, I. L. R. 9 Cal. 96: (S.C.) 11 C. L. R. 423.

European British Subjects.—See ss. 408 and 416.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Saving of sentences on European British subjects.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

For definition of 'Public Prosecutor,' see s. 4 (*m*), *ante*. Section 492 deals with the appointment of Public Prosecutor.

There is no appeal given by this section from an interlocutory order, *e.g.*, an order by a Sessions Judge refusing to add new charges. See *Emp.* v. *Vajiram*, I. L. R. 16 Bom. 414.

An appeal by the Local Government from a judgment of acquittal must be presented within six months from the date of the judgment appealed against.—*Limitation Act*, XV *of* 1877, *Sched. II, Art.* 157. As to limitation, see further notes to s. 404, *ante*, and *Reg.* v. *Jyadulla*, I. L. R. 2 Cal. (F. B.) 436.

The withdrawal of a complaint operates as an acquittal, and the High Court has no authority to entertain the matter at all, except upon an application duly made with the sanction of the Government.—*Luchi Bahara* v. *Nityanund Doss*, 19 W. R. Cr. 55.

The words 'appellate judgment of acquittal' were held under Act X of 1872 to include all judgments of an Appellate Court by which a conviction is set aside.—*Government of Bengal* v. *Gokool Chunder Chowdhry*, 24 W. R. Cr. 41.

A judgment passed by a Court of Session following the verdict of a jury acquitting the prisoner was held, under s. 272 of Act X of 1872, to be a judgment of acquittal within the meaning of that section, although the Judge disagreed with the verdict.—*Emp.* v. *Judoonath Gangooly*, I. L. R. 2 Cal. 273. In that case the jury, on a charge of murder, had found the accused not guilty of the charge, but convicted him of culpable homicide not amounting to murder. The Local Government directed an appeal, which was allowed.

The High Court has power under s. 427, *infra*, on an appeal under this section, to order the accused to be arrested pending the appeal.—*Reg.* v. *Gobin Tewari*, I. L. R. 1 Cal. 281.

No appeal, it has been held, at the instance of the Local Government lies from an order of acquittal in a case which has been tried by a jury, when the questions involved are purely questions of fact; for such an appeal to lie it must be supported upon a ground which is covered by s. 418.—*Government of Bengal* v. *Purmeshur Mullick*, I. L. R. 10 Cal. 1029.

In the case of *Emp.* v. *Ala Bukhsh*, I. L. R. 6 All. 484, it was said that while it was not an inflexible rule that where either Government on the one side, or an accused on the other, has a right of appeal, and does not exercise it, the powers of the High Court under s. 439, *post*, cannot be exercised, yet in such cases these powers should be sparingly used, save in very exceptional circumstances, and not at all in reference to questions of fact. See *Emp.* v. *Lalji*, Punj. Rec., 1883, p. 41. It is, however, the general rule of the Calcutta High Court not to interfere in revision, under s. 439, with an acquittal.—*In re Municipal Committee of Dacca* v. *Hingnoo Ray*, I. L. R. 8 Cal. 895.

Where the Government appeals and asks for a conviction, it is for them to begin and to satisfy the Court that there is a case calling upon the prisoner for an answer.—*Reg.* v. *Ram Churn Ghose*, 20 W. R. Cr. 33.

As to when the High Court will interfere on an appeal by the Local Government, see *Emp.* v. *Gayadin*, I. L. R. 4 All. 148: *Emp.* v. *Uttam*, Punj. Rec., 1885, p. 68, and *Emp.* v. *Gobardhan*, I. L. R. 9 All. 528.

In *Emp.* v. *Bhibhuti Bhusan Bhit*, I. L. R. 17 Cal. 485, it was said that the Government have the same right of appealing against an acquittal as a person convicted has of appealing against a conviction and sentence, and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided.

Where, on the appeal of the Government, an order of acquittal is set aside and sentence passed, that sentence will commence to run from the date of the committal of the accused to jail, and not from the date of the arrest or of the sentence on appeal.—*Emp.* v. *Mahaddi*, 6 C. L. R. 349.

The only course to be pursued, where it is sought to set aside an order of discharge made by a Presidency Magistrate, it was held under s. 168 of Act IV of 1877, is that laid down in that section, and as by that section there was no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain under the Court's extraordinary powers that which he might obtain had he a right of appeal.—*In re Poona Churn Pal*, I. L. R. 7 Cal. 447. See *Dhanmath Ghatlack* v. *Rajcoomar Singh*, I. L. R. 3 Cal. 573.

When Government desires to consider the propriety of making an appeal under s. 272 (417) of the Criminal Procedure Code, it is ordinarily sufficient that the Public Prosecutor or other officer appointed by Government should have an opportunity of taking copies of the record. But in exceptional cases in which Government may consider it essential to see any original documents, such documents may be given into the possession of the officer appointed by Government to receive them, under such precautions for securing their integrity and safe return as to the Court may seem necessary.—*Bombay Gazette*, 1879, pp. 471 473.

The Punjab Government has issued the following Circular No. 37-1142, dated 16th December 1884:—

The Lieutenant-Governor will not exercise the right of appeal under s. 417 of the Criminal Procedure Code at all in unimportant cases. In cases that are important, it must be most sparingly exercised, and only when (1) there is a very high probability that the appeal will result in a conviction; (2) there are special circumstances in the case which call for the right. These are—

(*a*) a gross miscarriage of justice resulting in the acquittal, or

(*b*) the production of fresh and credible evidence after the acquittal, or

(*c*) other reasons rendering an appeal necessary in the interests of justice and of the public.—*Punj. Rec.*, 1884, *Government Orders*, p. 77.

In capital cases where the Local Government appeals under this section it is, generally speaking, undesirable that the prisoner's fate should be discussed while he remains at large, and the Government should in that case apply for the arrest of the accused under s. 427, *post*.—*Emp.* v. *Gobardhan*, I. L. R. 9 All. 528, *per* EDGE, C.J.

Santhal Pergunnahs.—See Reg. V of 1893 s. 4 (I.)

418. An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Appeal on what matters admissible

EXPLANATION.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

Act X of 1872, s. 271, para. 2, as amended by Act XI of 1874, para. 22. Compare Act X of 1877, s. 541.

In dealing with a case submitted under s. 307 *supra*, *i.e.*, where the Sessions Judge disagrees with the verdict of a jury, the High Court may exercise any of the powers which it may exercise on an appeal: it may acquit or convict the accused of any offence of which the jury could have convicted

him upon the charge framed and placed before it and, if it convicts him, may pass such sentence as might have been passed by the Sessions Court, and that power is not in any way cut down by ss. 418 and 423.—*Emp.* v. *McCarthy*, I. L. R. 9 All. 420. Under s. 307 the High Court has power to interfere with the verdict of a jury where the verdict is perverse or obtuse and the ends of justice require that it should be set aside. Its powers are not thereby limited to interference in trials by jury in questions of law only as under s. 418.—*Ibid.*

In a case where the accused in a trial by a jury was convicted of an offence triable by assessors, MACLEAN, J., expressed an opinion that an accused person who would have been entitled to an appeal on the facts of the case, had he been tried with the aid of assessors, was not debarred from that right merely by the fact that the trial, which was by jury when it ought to have been with the aid of assessors, was not invalid.—*Emp.* v. *Shiva Chunder Kai*, I. L. R. 3 Cal. 795.

The opinion expressed by MACLEAN, J., seems to be an expansion of the section which gives an appeal on matters of law only, where the trial *was* by jury. Section 530 provides that if an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid, and if an offence triable by a jury is tried with the aid of assessors, the trial shall not, on that ground only, be invalid, unless the objection is taken before the Court records its finding.

In the case of *Bhootnath Dey*, 4 C. L. R. 405, in a trial by jury before a Court of Sessions upon charges, some of which were triable by a jury and some with the aid of assessors, the jury by a majority of four to one returned a verdict of "not guilty" on all the charges. The Judge disagreed with the jury, and directed that the accused should be kept in custody, pending a reference to the High Court. Subsequently the Judge called upon the pleaders of the accused to show cause why the accused should not be punished, the trial being treated as having been held with the aid of assessors. No cause having been shown, the Judge recorded his judgment, treating the trial as a trial with the aid of assessors, and concurring with the juror constituting the minority, he sentenced them to various periods of imprisonment. It was held, that the Judge was not competent to treat the trial as a trial with the aid of assessors and to act as he had done.

Chapter XXIII, *supra*, provides as to what offences shall be tried by jury and what offences with the aid of assessors. Where a Judge, disagreeing with the verdict of a jury, submits the case to the High Court, that Court is empowered to exercise any of the powers which it may exercise on an appeal, and may therefore consider the facts. So, under s. 376, the High Court may go into the facts upon a case of sentence of death submitted under s. 374 for confirmation.—*Reg.* v. *Jaffir Ali*, 10 W. R. Cr. 74; *Queen* v. *Koonyo Leth*, 11 B. L. R. 19. See notes to s. 376, *supra*.

The High Court on a point of law, as to the admissibility of rejected evidence reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of Act X of 1875, had power, it was held, to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial, and a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial.—*Imperatrix* v. *Pitamber Jina*, I. L. R. 2 Bom. 61. See also *Queen* v. *Hurribole Chunder Ghose*, I. L. R. 1 Cal. 207: *Reg* v. *Navroti*, 9 Bom. H. C. R. 355.

In *Gogun Chunder Ghose* v. *Emp.*, I. L. R. 6 Cal. 247: (S. C.) 7 C. L. R. 74, where it was held that evidence had been improperly admitted in a trial by a jury, the High Court proceeded to consider the evidence in the case and ultimately arrived at the conclusion, that, independently of the evidence so improperly admitted, there was not sufficient evidence of guilt.

Where a Court has omitted to consider, or has given an erroneous or improper reason for disbelieving or setting aside as of no value relevant evidence upon the essential question in a case, the omission or error is a matter of law.—*Hurropershad Roy Chowdhry* v. *Umatara Dabi*, 8 C. L. R. 449: (S. C.) I. L. R. 7 Cal. 263. That was a civil case, but the *ratio decidendi* applies equally in criminal cases.

In a case tried by jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected.—*Queen* v. *Gopal Bhareswalla*, 1 W. R. Cr. 21.

This section applies also to appeals by the Local Government against acquittal.—*Government of Bengal* v. *Purmeshur Mullick*, I. L. R. 10 Cal. 1029. And in a recent case it was said there is no distinction between the mode of procedure and the principles upon which appeals by the Government and appeals by accused persons are to be decided.—*Emp.* v. *Bhibuti Bhusan Bhit*, I. L. R. 17 Cal. 485. WHITE, J., however, in dealing with the duty of a Court trying a criminal appeal, said: "The sound rule to apply in trying a criminal appeal where questions of disputed fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. There the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong."—*Protab Chunder Mookerjee* v. *Emp.*, 11 C. L. R. 25. But see *Emp.* v. *Safiwan Lal*, I. L. R. 5 All. 396, *per* OLDFIELD, J; and *Emp.* v. *Bhibuti Bhusan Bhit*, I. L. R. 17 Cal. 485.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

The procedure where the appellant is in jail is provided for by the next section.

In exercise of the power conferred by s. 35 of the Court Fees Act (VII of 1870), the Governor-General in Council has been pleased to remit the fees leviable on copies of judgments or orders passed by a Criminal Court, and of a Judge's charge to the jury furnished to any person affected by such judgment or order, provided that such person is in jail, or the Court for some special reason sees fit to grant such copy free of expense.—*Notification, Government of India, No.* 996 *of* 6*th June*, 1873, *Wilkins*, p. 107.

A petition of appeal, it was held in Madras, in a criminal case may be presented by any person authorized by the appellant to present it, whether an authorized pleader or not—*In re Subba Aitala*, I. L. R. 1 Mad. 304, *Weir*, p 3. See *Emp.* v. *Shivram Gundo*, I. L. R 6 Bom. 14.

In the Punjab, no petition of appeal or revision may be admitted by a Criminal Court, unless it is either submitted through the district or jail authorities or presented by the convicted person himself, or by some person authorized by power of attorney to present it on behalf of the convicted person.—*Punjab Gazette*, 1874, p. 140; *Smyth*, p. 104.

In a case tried by a jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected.—*Queen* v. *Gopal Bhereswalla*, 1 W. R. Cr. 21.

In transmitting to the High Court copies of proceedings on appeals, Sessions Judges and Magistrates were directed by the Madras High Court to see that the proceedings were accompanied by copies of the judgment or order appealed against—*Mad. H. C. Pro.*, 10*th April*, 1875; *Weir*, p 3

An English translation of the whole of the evidence given at the time should also be transmitted *Mad H C. Pro.*, 6*th and* 13*th August* 1862, *Weir*, p. 33.

Prisoners applying for copies required for the purposes of appeal should invariably be furnished with a copy of the judgment or order appealed against, and not merely with a copy of the sentence. *Mad. H. C. Pro*, 21*st December* 1874; *Weir*, p. 9

Limitation.—See note to s. 404, *supra*, and *Emp.* v. *Lingya*, I. L. R. 9 Mad 259

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Procedure when appellant in jail

The officer in charge of the jail should give prisoners every facility to enable them to prepare their petitions of appeal.—*Nitto Gopal Palit, Petitioner*, 13 W R Cr 69

Where an appeal preferred under this section has been admitted by the Appellate Court and notice has been properly given under s. 422 and the record of the case has been sent for and perused under s 423, the Appellate Court is competent under the last named section to dispose of the appeal though the appellant is not present (as when he is in jail) and is not represented by a pleader The only limitation placed by s. 423, on the powers of the Appellate Court before disposing of the appeal is that it must peruse the record, and if, the appellant is present or is represented by a pleader the appellant in person must be heard or the pleader must be heard.—*Emp.* v. *Popki*, I. L R 13 All. 171. F B, MAHMUD, J, dissenting.

In computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court by Art 154, Sched II, of the Limitation Act, XV of 1877, the time taken in forwarding an application by a prisoner for a copy of the judgment, and in transmitting the same from the Court to the jail, must be excluded. In the case of appeals by prisoners in jail presentation of the petition of appeal to the officer in charge of the jail is, for the purpose of the Limitation Act, equivalent to presentation to the Court.—*Emp.* v. *Lingya*, I. L. R. 9 Mad. 259 *Muhammad*, Punj. Rec., 1890, p. 90

Petitions of Appeal to be sent direct to High Court.—Petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, shall be forwarded by such officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance, and in the following form, to the Judge whose sentence or order is appealed against —

To

THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner .. .. against the Judge's sentence or order, dated ... . and noted at foot, has this day been presented to the officer in charge of the .. .. jail, and has been forwarded to the High Court, as required by s. 277 of the Code of Criminal Procedure.—*Cal. H. C. C. O*, *No.* 9 *of* 7*th August*, 1867; *Wilkins*, p. 121.

As to records of appealed cases to be forwarded, see *Cal. H C. C. O., No.* 5 *of* 28*th May*, 1868, *Wilkins*, p 122.

The following rules are in force in the Punjab —

Every petition of appeal should be accompanied by a copy of the judgment or order appealed against, and, if the person appealing is in jail, the copy should be furnished free of expense.

Along with the petition of appeal and copy of the judgment, the Deputy Commissioner should forward to the Appellate Court the file of the case, so that the appeal may be disposed of with as little delay as possible.

When the appeal lies to the Chief Court, the Deputy Commissioner should forward the file in his office through the Commissioner, so that the files for the Sessions Court and of the committing Magistrate may be transmitted together to the Chief Court.

If the appeal is preferred by a person convicted on a trial held by a Deputy Commissioner invested with powers under s. 36, the petition of appeal accompanied by the necessary copy and the record of the case may be forwarded direct to the Chief Court, if the sentence is appealable to that Court.

In both cases the file should be sent with an English docket.—*Smyth*, p. 103.

Procedure by Officer of the Jail and Sessions Judge on Appeal being made to the High Court.—Every officer in charge of a jail, on receiving, under s. 277 (420) of the Code of Criminal Procedure, a petition of appeal to the High Court against a sentence or order of a Sessions Judge, shall at once intimate the fact to such Sessions Judge, and at the same time inform him whether the petition of appeal is accompanied by a copy in English of the Sessions Judge's judgment or charge to the jury. If the petition of appeal be not accompanied by such copy, the Sessions Judge shall at once forward to the High Court a certified copy of the judgment recorded in the case; and, if subsequently the case is called for by the High Court, no second copy need be made to accompany the fair copy of the Sessions Judge's proceedings.—*Bombay Gazette*, 1879, pp. 471, 475.

Petitions of appeal emanating from prisoners in jail should be countersigned by the Superintendent of the Jail.—*Mad. H. C. Pro.*, *9th August*, 1894; *Weir*, p. 2.

Summary rejection of appeal.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

A petition for appeal presented for admission may be withdrawn.—*In re Chunder Nath Deb*, 5 C. L. R. 372. See *In re Dwarka Manjee*, 6 C. L. R. 427.

Reasonable Opportunity.—A general notice posted in a Sessions Court-house that appeals would be heard for admission only on the first Court-day after the presentation of the appeal was held not to give a reasonable opportunity.—*Malan* v. *Queen*, I. L. R. 5 Mad. 11. The fact that the pleader of the accused is present in Court when an order is made admitting an appeal, does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for the hearing of the appeal.—*In re Gopal Chunder Mundle*, 10 C. L. R. 57.

The sound rule, it was said by WHITE, J., in trying a criminal appeal where questions of fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. In the latter case, the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong.—*Protab Chunder Mukerjee* v. *Emp.*, 11 C. L. R. 25. See, *contra*, *Emp.* v. *Sajiwan Lal*, I. L. R. 5 All. 380, *per* OLDFIELD, J.; and *Emp.* v. *Bhibhuti Bhusan Bhit*, I. L. R. 17 Cal 485.

The following rule is in force in Bombay:—

In order to carry out the provisions of s. 278 (421) of the Code of Criminal Procedure, which requires that an appellant shall have an opportunity of being heard before his petition of appeal is rejected, there shall be posted up in the Appellate Court, in a place accessible to the public, notice of the day appointed for considering the petition of appeal.—*Bombay Gazette*, 1879, pp. 471, 475.

For rules as to the time within which appeals are to be heard in the Chief Court of the Punjab, see *Punjab Gazette*, 1877, Part III, p. 579.

An order under s. 278 of Act X of 1872 by the Appellate Court, rejecting an appeal on perusal of the petitioner's appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings of the case, was held to be a final order within the scope of s. 285 (s. 430, *infra*), and not subject to revision.—*Emp.* v. *Mahomed Yashin*, I. L. R. 4 Bom. 101. See notes to s. 430, *infra*.

The judgment of an Appellate Court rejecting an appeal under this section should show clearly that the judgment appealed against has been perused and the appellant allowed an opportunity of being heard.—*Mad. H. C. Pro.*, *11th December*, 1874; *Weir*, p. 18.

An appellant in a criminal case has a right to appear and be heard by a mukhtear.—*Emp.* v. *Shivram Gundo*, I. L. R. 6 Bom. 14: see *Reg.* v. *Bechar Pitambar*, Bom. Cr. Rul. 22nd February, 1870: *Emp.* v. *Samaldas Bechar Lal*, *ib.* 13th January 1881 (unreported): *In re Subba Attala*, I. L. R. 1 Mad. 304.

Notice of appeal.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard,

and shall, on the application of such officer, furnish him with a copy of the grounds of appeal ;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

The fact that the pleader of the accused is present in Court when an order is made admitting an appeal, does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for hearing.—*In re Gopal Chunder Mundle*, 10 C. L. R. 57.

The following rules are in force in Bombay :—

With reference to No. 49 of the Rules relating to the remuneration and duties of law officers printed at pp. 743 to 751 of the *Government Gazette* for 1878, Part I, the High Court considers that, when, on the day fixed for hearing a criminal appeal, the appellant is represented by counsel, the Sessions Judge should adjourn the hearing of the appeal if he considers that sufficient notice has not been given to the Government Pleader to enable him to prepare himself in the case. Intimation that this will be the practice of the Court should be given to the pleaders. *Bombay Gazette, 7th May*, 1881.

Notice of the day appointed for hearing appeals in criminal cases should be posted up in the Courts (*Bombay H. C. Cir.* 62 : *Bombay Gazette*, 1879, pp. 471, 475) ; but a general notice posted up in the Sessions Court-house that appeals would be heard for admission only on the first Court-day after the presentation of the appeal, was held not to give the appellant a reasonable opportunity of being heard in support of his appeal under s. 421.—*Matan* v. *Queen*, I. L. R. 5 Mad. 11. See note to s. 421, *supra*.

Powers of Appellate Court in disposing of appeal.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law ;

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same ;

(*c*) in an appeal from any other order, alter or reverse such order ;

(*d*) nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Upper Burma.—In Upper Burma, with the exception of the Shan States, in any case in which an appeal lies, the Appellate Court may enhance any punishment which has been awarded, provided that, if the appeal is from the sentence of a Magistrate of any class, the Appellate Court shall not inflict a greater punishment than might have been inflicted by a Magistrate of the first class.—Reg. V of 1892, Sched. (XIII).

Sonthal Pergunnahs.—See Reg. V of 1893, s. 4 (IV).

It is only s. 417 which provides for appeals against orders of acquittal, and that section requires that such an appeal should be (1) directed by Government, and (2) presented to the High Court. Accordingly cl. (*a*) of this section can only apply to the High Court. See *Rungasami* v. *Narisimhulu*, I. L. R. 7 Mad. 213, p. 214.

It is to be observed that the power of enhancing sentences on appeal no longer exsits. See *Azim Khan*, Punj. Rec., 1887, p. 110. But the High Court may, on revision, enhance a sentence, so as to alter its nature.—*Emp.* v. *Ram Kuria*, I. L. R. 6 All. (F. B.) 622. In the case of *Mehter Ali* v. *Emp.*, I. L. R. 11 Cal. 530, the High Court of Calcutta, in dismissing an appeal, directed, as a Court of Revision, that the sentence passed should be enhanced. See s. 439, *infra*. See also s. 537, *infra*.

In Allahabad it was held that, under s. 439, the High Court has power to revise an order of acquittal though not to convert a finding of acquittal into one of conviction.—*Emp.* v. *Balwant*, I. L. R. 9 All. 134.

A Sessions Judge on appeal can quash an illegal conviction by an Assistant Magistrate.—*Reg.* v. *Heramun Singh*, 8 W. R. Cr. 30.

As a Court of Appeal, the High Court has full power to order a re-trial in a case tried with assessors.—*Lukhy Narain Nagory, Petitioner*, 24 W. R. Cr. 24. So, it was held under s. 280 of the former Code, as amended by s. 28 of Act XI of 1874, that it was competent to a Court of Session to order a re-trial of a case which is before it on appeal.—*In re Sher Mahomed*, 2 C. L. R. 511.

When a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a re-trial at the time, under this section, he is not precluded from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an acquittal. Where sanction is given for a prosecution for perjury and the case is tried by an incompetent Court, and the conviction quashed on appeal, a competent Court may re-try the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed.—*Rami Reddi* v. *Sesha Reddi*, I. L. R. 3 Mad. 48.

It is a general rule of the Calcutta High Court as a Court of Revision not to interfere with an order of acquittal.—*In re Municipal Committee of Dacca* v. *Hingoo Raj*, I. L. R. 8 Cal. 895. The Chief Court of the Punjab has held that it has power to do so, and set aside an acquittal on the ground that it was erroneous in law.—*Emp.* v. *Lalji*, Punj. Rec., 1883, p. 41.

In the case of *Emp.* v. *Imdad Khan*, I. L. R. 8 All. 120, under appeal, PETHERAM, C. J. (p. 139) said: "I have been pressed to alter the findings so as to convict Imdad Khan of some other offence under some other provision of law. For my part I have serious doubts as to whether I could alter the finding in any case in such a manner. It is, however, enough for me to say, that in my opinion such a course would not be right in the present case. If Imdad is guilty of some other offence, he may be charged and tried for it."

The High Court has no power under this section in affirming a conviction of rioting, assault or other breach of the peace,—*Jan Muhammad* v. *Emp.*, Punj. Rec., 1884, p. 38, or in any other case,—*Aziz* v. *Emp.*, I. L. R. 16 Cal. 779, to add to that sentence an order requiring security to keep the peace, the power to take security for keeping the peace not being mentioned among the powers given by s. 423 of the Code. Where a Magistrate has refused to take the defence of an accused, the proper order for the Appellate Court, when it does not consider it necessary to act under s. 428, *post*, is to annul the conviction and direct a new trial.—*Gohar* v. *Emp.*, Punj. Rec., 1884, p. 48.

The Appellate Court referred to in this section can, on an appeal from a conviction only, it was held, order an accused to be committed for trial when it considers that the accused is triable exclusively by the Court of Session.—*Queen-Emp.* v. *Sukha*, I. L. R. 8 All. 14. The meaning of the words in cl. (*b*), "or order him to be tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial," is as follows: If in an appeal from a conviction the Appellate Court finds that the accused person, who was triable only by a Magistrate of the first class or by a Court of Session, has, by an oversight or under a misapprehension, been tried, convicted and sentenced by a Magistrate of the second class, the Appellate Court may in that case reverse the finding and sentence, and order the accused to be re-tried by a Magistrate of the first class or by the Court of Session, and in like manner when the appellant who was triable solely by the Court of Session has been tried by a Magistrate of the first class, the Sessions Judge, in disposing of the appeal, is empowered to reverse the finding and sentence, and to order the accused to be committed for trial.—*Ib., per* BRODHURST, J. But in a later case, where the accused was tried by a Presidency Magistrate and sentenced under s. 326 of the Penal Code to rigorous imprisonment for two years, the Local Government being of opinion that the sentence was inadequate, moved the High Court under s. 435 to quash the Magistrate's proceedings and order the accused to be committed to the High Court. It was held that the High Court under s. 323 (*b*) had power, as an Appellate Court, to order the accused to be committed when it considered that that was the procedure which should have been adopted by the Magistrate in the case.—*Emp.* v. *Abdul Rahiman*, I. L. R. 16 Bom. 580. See *Emp.* v. *Sukha*, I. L. R. 8 All. 14.

WHITE, J., in dealing with the duty of a Court trying a criminal appeal, said: "The sound rule to apply in trying a criminal appeal where questions of disputed fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. There the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong."—*Protap Chunder Mookerjee* v. *Emp.*, 11 C. L. R. 25. But see *Emp.* v. *Sajiwan Lal*, I. L. R. 5 All. 386, *per* OLDFIELD, J., and *Emp.* v. *Bhikati Bhuiya Bhil*, I. L. R. 17 Cal. 485. In the last case the Court expressed its opinion that there is no distinction between the mode of procedure or the principles upon which appeals by the Local Government or by accused persons are to be decided.

"It is not competent to an Appellate Court to find a prisoner on appeal guilty of a graver offence than that with which he was charged at his trial, unless an opportunity is afforded to him of defending himself against the altered charge.—*In re Dwarka Manjee*, 6 C. L. R. 427. In this case the Court (TOTTENHAM and MACLEAN, JJ.) doubted whether a petition of appeal against a conviction could be withdrawn after the Appellate Court had perused the evidence. But in the case of *Chunder Nath Deb*, 5 C. L. R. 372, it was held that a petition of appeal presented for admission might be withdrawn.

The officer deciding an appeal shall, if he reverse or modify the finding of the lower Court or interfere with its sentence, record his reasons for so doing, a copy of which shall be transmitted to the Magistrate, whose decision was appealed against, or his successor in office. Except where the petition requires a stamp, it is not material whether the appeal of several convicted persons in the same case is made jointly in one petition or separately. Where a stamp is required, the petitions

must be separate, and separately numbered, and be accompanied by separate copies of the judgment or order appealed against.—*Bombay Gazette*, 1879, pp. 471, 475.

Reference to High Court under s. 307, supra.—Under s. 307 the High Court has power to interfere with the verdict of the jury where the verdict is perverse or obtuse, and the ends of justice require that such perverse finding should be set right. The power is not limited to interference on questions of law, and the provisions of s. 357 are in no way cut down by ss. 418 and 423.—*Emp.* v. *McCarthy*, I. L. R. 9 All. 420.

Appeal by Prisoner in Jail—Procedure:—Where an appeal has been admitted, and notice has been properly given under s. 422, and the record has been sent for and perused under s. 423, the Appellate Court is competent under the last-mentioned section to dispose of the appeal though the appellant is not present (as when he is in jail) and is not represented by a pleader. The only limitation placed in the power of the Appellate Court is that before disposing of the appeal it must peruse the record, and if the appellant is present or represented by a pleader, the appellant in person must be heard or the pleader must be heard.—*Emp.* v. *Pophi*, I. L. R. 13 All. 171, F. B. MAHMUD, J., dissenting.

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Section 367, *supra*, provides what a judgment must contain and specify. The following judgment of a Sessions Judge: "I have gone through the case, but I see no reason to interfere. The witnesses for the defence would not support the accused, and after the evidence of two was taken, the rest were withdrawn by the barrister of the accused," was held not to comply with the provisions of ss. 367 and 424. The case was returned to his Court in order that he might pass judgment according to law.—*Hakim Singh* v. *Emp.*, Punj. Rec., 1884, p. 54. In a similar case the High Court of Calcutta held that such a judgment was not a proper compliance with the law.—*Kamiruddin Dai* v. *Sonatun Mundul*, I. L. R. 11 Cal. 449. That case was followed under similar circumstances in the cases of *Ram Das Maghi*, I. L. R. 13 Cal. 110, and *In re Shivappa*, I. L. R. 15 Bom. 11. See also *Emp.* v. *Ram Narain*, I. L. R. 8 All. 514: *Rohimuddi* v. *Emp.*, I. L. R. 20 Cal. 353; and s. 367, *ante*.

Order by High Court on appeal to be certified to lower Court.

425. Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

The following rules as to orders passed in Criminal Appeals have been in force in the Punjab:—

1. The Chief Court will certify its decision to the Court from whose judgment the petition of appeal or revision was preferred: Provided that if such judgment was that of a Court subordinate to the Magistrate of the District, the decision of the Chief Court will be certified to the Magistrate of the District.

2. The Court to whom the decision is certified will, in case of rejection of appeal or confirmation of sentence, cause the appellant to be informed and in case of alteration, reversal or enhancement of sentence, shall issue a warrant accordingly to the officer in charge of the district in which the trial was held.

If the original sentence was one of fine only, such warrant shall be addressed to the person to whom the original warrant was addressed.

3. The Sessions Court will in all cases certify its decision passed in appeal to the Magistrate of the District in which the trial was held, with whom it rests to issue information or warrant, as the case may be, in the manner described in para. 2.

4. The Magistrate of the District will himself issue information in the mode prescribed in para. 2, in pursuance of all orders passed by his own Court on appeal.

5. The Magistrate of the District will, in communication with the Superintendent of the prison, arrange that no prisoner is removed from the jail in which the prisoner has been confined by order of the Court sentencing him to imprisonment until the period of appeal has expired, or if at that time an appeal is pending, until the decision of the Appellate Court is known.

6. If, for any reason, an exception has been made to the above rule, and a prisoner has been transferred before the order of the Appellate Court is known, it will rest with the Superintendent of the Jail of sentence to forward the information or warrant of the order of the Appellate Court to the Superintendent of the Jail to which the prisoner has been transferred, and the latter officer having executed his order, will report execution to the Court issuing the information or warrant.—*Punjab Gazette*, 1874, p. 140.

The following rules have been framed in Bombay to provide for the due certifying and execution of orders of Courts of Appeal, Reference, or Revision:—

(i) When a sentence on a prisoner is reversed or modified on appeal, a fresh warrant will be issued by the Appellate Court to the officer in charge of the jail for execution, and its order will be communicated to the lower Court for record.

(ii) When an appeal is rejected, or a sentence confirmed, an intimation to that effect will be sent to the officer in charge of the jail by the Appellate Court, and its order will be communicated to the lower Court for record.

(iii) When a case is revised by the High Court, the Court or Magistrate to which the High Court certifies its order under s. 260 (425) of the Code of Criminal Procedure will proceed under that section to issue a fresh warrant or order to the jailor.

(iv) When a prisoner has applied to the High Court in revision to have the sentence passed on him revised, and the High Court rejects the application, intimation to that effect will be made direct to the Superintendent of the Jail.

(v) In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which will then issue warrants to the officer in charge of the jail, as provided in s. 301 (381) of the Code of Criminal Procedure.

(vi) In all cases in which a sentence or order is modified or reversed, whether in appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been so modified or reversed. In revision cases, the Court to which the order is certified will issue the warrants as provided in para. 3.

(vii) In all cases the Superintendent of the Jail will acknowledge by letter the receipt of any warrant or order or intimation, and will inform the prisoner of the result of his appeal or application, and report the fact in the letter.

(viii) In all cases in which a fresh warrant has been issued, whether in appeal or revision, the warrant should be returned to the Court issuing it when it has been fully executed.—*Bombay Gazette*, 1879, pp. 471, 475.

The following rules to provide for the due certifying and execution of orders on appeal, reference, and revision have been passed in the N.-W. Provinces:—

I. The Appellate Court shall in every case certify its decision, which shall include the judgment or final order, to the Court from whose order the appeal was preferred.

II. When a sentence on a prisoner is reversed or modified on appeal, and the Appellate Court has not proceeded under the next succeeding rule, the Court to which the decision is certified shall issue a fresh warrant or order conformably thereto.

III. The Appellate Court can, if it sees fit itself, issue a fresh warrant or order conformable to its decision, and if it do so, shall notify the fact to the Court from whose order the appeal was preferred when certifying its decision under rule I.

IV. When an appeal is rejected or a sentence confirmed, the Court to which the decision is certified shall intimate the same to the officer in charge of the jail of the district in which the prisoner was convicted.

V. When a case is revised by the High Court, the Court of Session or Magistrate to whom the High Court certifies its order under s. 260 (425) of the Code of Criminal Procedure (Act X of 1872) will proceed under that section to issue a fresh warrant or order.

VI. When a prisoner has applied to the High Court in revision to have the sentence passed on him revised, and the High Court rejects the application, intimation to that effect will be made to the officer in charge of the jail through the Court of Session by which, or the Magistrate of the District in which, the sentence was passed.

VII. In cases referred by the Court of Session for the confirmation of sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which will then issue a warrant to the officer in charge of the jail as provided in s. 301 (381) of the Code of Criminal Procedure (Act X of 1872), and forward a copy of the same to the Magistrate of the District for information.

VIII. In all cases in which a sentence or order is modified or reversed, whether in appeal or revision, a separate warrant or order shall be issued as regards each prisoner whose sentence has been so modified or reversed, and the original warrant shall be recalled.

IX. A serial number shall be assigned to each trial in every Court. Each Court shall have its own yearly series of numbers to be so assigned; but a Court which exercises summary jurisdiction may, if it please, keep a separate series for its summary trials and a separate series for its ordinary trials. A Court of Session exercising criminal jurisdiction over more than one district may use a similar discretion.

X. Every warrant shall bear the number of the trial in which the commitment was ordered, and in any proceeding recalling a warrrnt, the number it bears shall be specified.

XI. In all cases the officer in charge of the jail will acknowledge by letter the receipt of any warrant or order or intimation, and will inform the prisoner of the result of his appeal or application, or communicate the same to him through the officer in charge of the jail where he may be undergoing his sentence at the time.

XII. In all cases in which a fresh warrant has been issued, whether on appeal or in revision, the warrant shall be returned to the Court issuing it when it has been fully executed and with an endorsement to that effect.—*Circular Order, No.* 4 *of* 1880, *N.-W. P. Gazette*, 1880, p. 1210.

The following rule is in force in Bengal.—

Decision on Appeal to be certified to Lower Court.—The Appellate Court shall in very case, except as otherwise herein provided, certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of such Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the Appellate Court, or to inform the appellant *in writing*, through the officer in charge of the jail, of the result of his

appeal.—*Cal. H. C. C. O., No. 6 of 2nd July* 1869; *Wilkins*, p. 123. *Explanation.*—The Appellate Court should at once communicate the decision arrived at to the Court which has to carry out its order. A copy of the formal order passed and of the judgment on appeal should, however, always be attached by the Appellate Court to the record of the original Court, and returned to it therewith.—*Cal. H. C. C. O., No. 4 of 30th March* 1878; *Wilkins*, p. 123.

Exception.—In cases where an order passed by an officer in charge of a Sub-division other than the Sudder Sub-division is reversed or modified on appeal, the Appellate Court shall certify its decision to the Magistrate of the District, who will issue a warrant to the officer in charge of the jail to give effect to the orders of the Appellate Court, and will inform the Court, from whose orders the appeal was preferred, of its result.—*Cal. H. C. C. O., No. 6 of 2nd July*, 1869; *Wilkins*, p. 123.

426. Pending any appeal by a convicted person, the Appellate Court may for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

Suspension of sentence pending appeal.

Release of appellant on bail.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

A sentence of imprisonment cannot be suspended to take effect at a future period, but must commence from the time that the sentence is passed. Where a Deputy Magistrate postponed the execution of a sentence of imprisonment for a stated period at the request of the accused to allow the accused to appeal, it was held that the sentence was bad in law and could not be carried into execution.—*In re Kishen Soonder Bhuttacharjee*, 12 W. R. 47. See *In re Krishnanund Bhuttacharji*, 3 B. L. R. Ap. Cr. 50.

The natural effect of suspending a sentence of rigorous imprisonment is to relax the severity of the sentence, and to cause the prisoner's simple detention in custody. The same effect follows from suspending a sentence of simple imprisonment, the prisoner whose sentence is so suspended being placed in the position of a prisoner remanded for trial.—*Mad. H. C. Pro., 15th April*, 1868; *Weir*, p. 38.

The following rule is in force in Bombay.—

Whenever under the provisions of s. 281 (of the Criminal Procedure Code) the Court of Session directs an appellant to be released on bail, the Sessions Judge shall order such bail to be given before the Nazir of the District Court or before such Magistrate as the Judge may think most convenient.—*Bombay Gazette*, 1879, pp. 471, 475.

As to High Court's power of revision, see s. 439, *infra*.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Arrest of accused in appeal from acquittal.

See *The Queen* v. *Gobin Tewari*, I. L. R. 1 Cal. 281: *Emp.* v. *Mangu*, I. L. R. 2 All. 340: *Emp.* v. *Karim Bakhsh*, I. L. R. 2 All. 380. See also s. 439, *infra*.

In capital cases where the Local Government appeals from an order of acquittal it was said to be generally speaking undesirable that the prisoner's fate should be discussed while he is at large and that the Government should in such cases apply for the arrest of the accused.—*Emp.* v. *Gobardhan*, I. L. R. 9 All. 528.

Scandalous Petition.—Where a prisoner applied to the High Court to be admitted to bail pending the disposal of the appeal and the petition contained defamatory allegations consisting (*inter alia*) of irrelevant attacks on the trying Magistrate and other officers in the service of the Government of India, the Bombay Court refused to allow the petition to be filed and ordered it to be returned—*In re Durzad*, I. L. R. 15 Bom. 488—and in so doing appears to have followed the practice in England in such matters—See *Ex-parte Simpson*, 15 Ves. 476: *Cracknall* v. *Janson*, L. R. 11 Ch. D. 1: *Bult* v. *Coman*, 8 Bro. and Bing., p. 587.

428. In dealing with any appeal under this Chapter, the Appellate Court if it think additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall, for the purposes of Chapter XXV, be deemed to be an inquiry.

This section does not authorise the examination of the accused as a witness.—*Emp.* v. *Subbayya*, I. L. R. 12 Mad. 451.

When an Appellate Court directs further evidence to be taken by a subordinate Court, it is competent to the subordinate Court before which such evidence is given, if any offence against public justice as described in s. 195 is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of s. 476. —*Reg.* v. *Buktoar Maifaraz*, 15 W. R. Cr. 64.

See s. 439, *infra*, and *Emp.* v. *Fateh*, I. L. R. 5 All. 217, p. 221.

Where proceedings are submitted under s. 374 for confirmation of sentence of death, the High Court has power to take further evidence itself or direct the Sessions Court to do so.—*S. 375, supra.*

Where an Assistant Magistrate decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge on appeal ordered the evidence of those witnesses to be taken by the Assistant Magistrate, and on the depositions being returned to him, proceeded to deal with the case, and confirmed the judgment and sentence passed by the Assistant Magistrate. It was held, that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that an appeal lay from it to the High Court upon the merits.—*Queen* v. *Mohesh Chunder Chuttopadhia*, 2 W. R. Cr. 13. See *Queen* v. *Poorno Chunder Doss*, 8 W. R. Cr. 50.

See *Emp.* v. *Ram Lall*, I. L. R. 15 All. 136.

Procedure where Judges of Court of appeal are equally divided.

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Under s. 36 of the Letters Patent 1865, which is the same in respect of each of the three Presidencies, if a Division Court is composed of two or more Judges "and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the majority of the Judges, if there shall be a majority; but if the Judges should be equally divided then the opinion of the Senior Judge shall prevail." Where the Judges of the Bombay High Court differed in opinion in a case referred by a Sessions Judge to the High Court, under s. 507, *supra*, the Court directed that the case should be laid before a third Judge, being of opinion that the Code overrules the provisions cl. 36 of the Letters Patent 1865.—*Emp.* v. *Dada Ana*, I. L. R. 15 Bom. 452.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

An order by an Appellate Court rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings in the case, is a final order within the scope of this section and is not subject to revision.—*Emp.* v. *Mahomed Yashin*, I. L. R. 4 Bom. 101.

Sonthal Pergunnahs:—Under s. 4 (cl. 1) of Act XXXVII of 1855 (which is still in force in the Sonthal Pergunnahs) all sentences passed in criminal cases are final. Accordingly an order under that Act sentencing an accused to imprisonment is not open to revision under Chap. XXXII.—*Dular Dai Rai* v. *Nijabat Hossein*, I. L. R. 12 Cal. 536. See Reg. V of 1893, s. 2.

Decision on Appeal to be certified to Lower Court.—The Appellate Court shall in every case, except as otherwise herein provided, certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of such Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the Appellate Court, or to inform the appellant *in writing*, through the officer in charge of the jail, of the result of his appeal.—*Cal. H. C. C. O., No.* 6 *of* 2*nd July*, 1869; *Wilkins*, p. 123. *Explanation.*—The Appellate Court should at once communicate the decision arrived at to the Court which has to carry out its order. A copy of the formal order passed and of the judgment on appeal should, however, always be attached by the Appellate Court to the record of the original Court, and returned to it therewith.—*Cal. H. C. C. O., No.* 4 *of* 30*th March*, 1878; *Wilkins*, p. 122.

Exception.—In cases where an order passed by an officer in charge of a Sub division other than the Sudder Sub-division is reversed or modified on appeal, the Appellate Court shall certify its decision to the Magistrate of the District, who will issue a warrant to the officer in charge of the jail to give effect to the orders of the Appellate Court, and will inform the Court, from whose orders the appeal was preferred, of its result.—*Cal. H. C. C. O., No. 6 of 2nd July 1869*; *Wilkins*, p. 123.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter shall finally abate on the death of the appellant.

In the case of *Imperatrix* v. *Dongaji Andaji*, I. L. R. 2 Bom. 564, it was held, that Act X of 1872 gave no right to the heir, devisee, executor, or any other representative of a deceased convict to lodge an appeal, or continue and prosecute an appeal already lodged. It was also held, that an appeal lodged by a convict abates on his death, but that the High Court nevertheless might call for and examine the record of the case with a view to revision and rectification, and might make such order thereon as it might consider just.

CHAPTER XXXII.*

OF REFERENCE AND REVISION.

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

On a reference under this section as to whether on the facts stated any offence has been committed by an accused person, it lies on the prosecution to make out that an offence has been committed and, under the circumstances, the prosecution must begin.—*Emp.* v. *Haradhan*, I. L. R. 19 Cal. 380.

Disposal of case according to decision of High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

The High Court may direct by whom the costs of such reference shall be paid.

Power to reserve questions arising in original jurisdiction of High Court.

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its Original Criminal Jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail,

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to

* A Joint Sessions Judge cannot exercise the powers of a Sessions Judge under this Chapter.—*In re Musa Asmal*, I. L. R. 9 Bom. 164—nor can matters be referred to him so as to enable him to dispose of them under this Chapter.—*Reference by Judge of Surat*, I. L. R. 9 Bom. 352.

alter the sentence passed by the Court of Original Jurisdiction, and to pass such judgment or order as the High Court thinks fit.

The power exercised by a High Court sitting as a Court to decide questions of law reserved in criminal cases under this section is the power of review, and the Court is a Court of Reference and Revision.—*Emp.* v. *Appa Subhana Mendre*, I. L. R. 8 Bom. 200. Where a question is reserved, the prisoner's counsel has the right to begin.—*Ib.*

In connection with this section cls. 25 and 26 of the Letters Patent may be read. They are as follows:—

Section 25.—And we do further ordain that there shall be no appeal to the said High Court of Judicature from any sentence or order passed or made on any criminal trial before the Courts of Original Criminal Jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

Section 26.—And we do further ordain that on such point or points being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment, there is an error in the decision of a point or points of law decided by the Court of Original Criminal Jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law and thereupon to alter the sentence passed by the Court of Original Jurisdiction and to pass such judgment and sentence as to the said High Court shall seem fit.

The High Court, on a point of law as to the admissibility of rejected evidence, reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of Act X of 1875, had power, it was held in Bombay, to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial, or a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial.—*Imperatrix* v. *Pitamber Vina*, I. L. R. 2 Bom. 61. See *Hurribole Chunder Ghose*, I. L. R. 1 Cal. 207. In *Emp.* v. *O'Hara*, I. L. R. 17 Cal. 642, upon a review under cl. 26 of the Letters Patent, the Full Bench did not consider it necessary to deal with the question raised as to what the powers of the Court were acting under cl. 26 of the Letters Patent, but quashed the conviction on the ground of improper reception of evidence and misdirection. See cases cited in the last-mentioned case.

In England in a criminal trial if any evidence not legally admissible against the prisoner is left to the jury, and they find him guilty, the conviction is bad, and this notwithstanding that there is other evidence before them properly admitted and sufficient to warrant a conviction.—*Reg.* v. *Gibson*, 18 Q. B. D. 537.

Section 167 of the Evidence Act provides that the improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any cases if it shall appear to the Court before which such objection is raised that independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

The High Court under s. 369, *supra*, has no power to review an order dismissing an application by an accused person for revision, and the only remedy is by an appeal to the prerogative of the Crown, as exercised by the Local Government.—*Emp.* v. *Durga Charan*, I. L. R. 7 All. 672: *Emp.* v. *Fox*, I. L. R. 10 Bom. (F. B.) 176. The provisions of s. 369, so far as they affect the High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and subsequently disposed of under the provisions of s. 434 and the Letters Patent.—*Emp.* v. *Durga Charan*, I. L. R. 7 All. 672, *per* BRODHURST, J. See *Reg.* v. *Godai Raout*, 5 W. R. Cr. 61.

Power to call for records of inferior Courts.

435. The High Court or any Court of Session, or District Magistrate, or any Subdivisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

If any Subdivisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

The first part of this section corresponds with Act X of 1872, ss. 294, 295, para. 1, using the word 'proceeding' for 'case,' and conferring powers on Subdivisional Magistrates, when empowered by the Local Government. Instead of the words "inferior Criminal Court," s. 295 of the old Code

used the words "Court subordinate to such Court or Magistrate." As to the last paragraph, see Act X of 1872, s. 520. See also *In re Chunder Nath Sen*, I. L. R. 2 Cal. 295: *Bradley* v. *Jameson*, I. L. R. 8 Cal. 580, and Charter Act, 24 and 25 Vic. 104, s. 15.

Section 143 deals with orders against the repetition of public nuisances, s. 144 with orders in certain urgent cases of nuisance, and s. 176 with inquiries into the cause of death.

Upper Burma:—In Upper Burma, with the exception of the Shan States, Reg. V of 1892, sched. XII, provides:—

(1) The District Magistrate may in any case in which he has himself called for, or a Subdivisional Magistrate has forwarded to him, the record of a proceeding before a Magistrate of the second or third class pass such order as in the case he thinks fit, provided that he shall not pass a severer sentence for the offence which, in his opinion, the accused has committed, than might have been passed for such offence by the Magistrate who tried the case, and that no order shall be made to the prejudice of the accused unless he has had an opportunity of showing cause against it.

(2) The Governor-General in Council or the Local Government may at any time by notification in the official Gazette direct that this section shall cease to be in force in any district with effect from a date to be specified in the notification.

See as to the subordination of Courts, s. 17, *supra*.

"*Proceeding*."—An order of a Magistrate altering a sentence of six months' imprisonment to one of five years' detention in a reformatory under s. 8 of Act IV of 1876 is a judicial proceeding.—*Emp.* v. *Manaji*, I. L. R. 14 Bom. 381.

A Magistrate of a District is competent under this section to call for and deal with the record of any proceeding before any Magistrate of whatever class in his own district. After a considerable conflict this has now been decided by Full Benches of the High Courts of Calcutta, Madras, and Allahabad (*Opendro Nath Ghose* v. *Dukhini Bewah*, I. L. R. 12 Cal. 473: *In re Padmanabha*, I. L. R. 8 Mad. 18: *Emp.* v. *Laskari*, I. L. R. 7 All. 853), by a Division Bench of the High Court at Bombay (*Emp.* v. *Priya Gopal*, I. L. R. 9 Bom. 100), and by the Chief Court in the Punjab.—*Shamsuddin* v. *Pir Ali*, Punj. Rec., 1885, p. 82.

A Joint Sessions Judge cannot exercise the powers of a Sessions Judge under this Chapter (*In re Musa Ismail*, I. L. R. 9 Bom. 164); nor can matters be referred to him so as to enable him to dispose of them.—*Reference by Judge of Surat*, I. L. R. 9 Bom. 352. See s. 193, cl. 2, *supra*, which contemplates only cases for trial.

In the case of *Shoindro Noshyo* v. *Rung Lal Jhah*, 25 W. R. Cr. 21, it was held that s. 295 of Act X of 1872 applied only to the Sessions Judge of the District and not to Joint Sessions Judges. Under s. 31, *ante*, however, Joint Sessions Judges have the same powers as to sentences as those possessed by Sessions Judges and Additional Sessions Judges, and there seems to be no reason why the provisions of this section should not apply equally to them.

Where a Sessions Judge has called for the record of an inferior Court, he ought, before referring the case to the High Court for orders, to call upon the inferior Court for an explanation of the order passed, and should submit such explanation together with the rest of the record to the High Court.—*Mathumti* v. *Turipulla Paramanik*, I. L. R. 8 Cal. 644.

In the case of *Reg.* v. *Bellios*, 12 B. L. R. 249: (S. C.) 20 W. R. Cr. 61, it was held by GLOVER, J., that the power of the High Court under s. 294 of Act X of 1872 was limited to sentences and orders passed by subordinate Courts as distinct from judgments of such Courts, and that a judgment could not be interfered with (except in cases where the law gave an appeal upon the facts), unless it could be shown that it was contrary to law. PONTIFEX, J., held that the High Court could not interfere with a conviction unless there had been some material error of law rendering the conviction illegal and improper. See also *Reg.* v. *Bindu*, 8 W. R. Cr. 60.

A Magistrate acts contrary to law when he determines, on an application by a prisoner for copies of documents required by him for his defence, whether the documents are necessary or not; and therefore a conviction was set aside where the Magistrate refused to grant the prisoner copies of papers necessary for his defence.—*Sheeb Pershad Pundah, Petitioner*, 14 W. R. Cr. 77.

Waiver or Consent of Accused.—Criminal proceedings are bad unless they are conducted in the manner prescribed by law, and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused.—*Queen* v. *Bholanath Sein*, 25 W. R. Cr. 57: (S. C.) I. L. R. 2 Cal. 23: *Reg.* v. *Bishonath Pal*, 12 W. R. 3—for an accused can consent to nothing.—*Emp.* v. *Morarji*, I. L. R. 13 Bom. p. 391: *Attorney-General* v. *Bertrand*, 36 L. J. P.C. 51, p. 57.

Evidence.—It is only in very exceptional cases that the High Court sitting as a Court of Revision deals with questions of evidence and disturbs or supplements the finding of a lower Court on a question of fact.—*Emp.* v. *Shek Saheb Budrudin*, I. L. R. 8 Bom. 197: *Bhawoo Jivaji* v. *Muljt Dayal*, I. L. R. 12 Bom. 377: *Emp.* v. *Chagan Dayaram*, I. L. R. 14 Bom. 331. It will do so in the interests of justice where the inquiry has been faulty.—*Nobin Krishna* v. *Rassick Lall*, I. L. R. 10 Cal. 1047. But when a Sessions Judge, after a careful and deliberate weighing of the evidence on the record, comes to a conclusion unfavourable to the accused, the High Court is not justified in interfering under this section, however much it might hold a contrary opinion as to the value of the evidence (*Reg.* v. *Bellios*, 12 B. L. R. 249: (S.C.) 20 W. R. Cr. 61), for although the High Court has power to go into questions of fact under this section, it will only exercise the power in cases in which it finds that it will be in the interests of justice to do so.—*In re Nobin Krishna Mookerjee* v. *Rassick Lall Laha*, I. L. R. 10 Cal. 1047. In that case the High Court exercised the power to go into questions of fact. See *In re Taruknath Mookerjee*, 19 W. R. Cr. 30: (S. C.) 10 B. L. R. 285. In *Reid* v. *Richardson*, I. L. R. 14 Cal. 361, the High Court dealt with the

whole of the evidence in the case, and the Magistrate having made an order under s. 145, whereas the proper order was under s. 146 of the Code of Criminal Procedure, the High Court made the order which the lower Court ought to have made.

The High Court is not debarred from interfering in cases requiring the exercise of discretion if it appears on the face of the proceedings that the Magistrate has exercised no discretion or has exercised his discretion in a manner wholly unreasonable.—*In re Juggut Chunder Chuckerbutty*, I. L. R. 2 Cal. 110.

In the case of *In re Mohesh Mistree*, I. L. R. 1 Cal. 282: (S. C.) 25 W. R. Cr. 30, 80, it was held, under the old Code, dissenting from a decision of the Bombay High Court in the case of *Sidya bin Satya*, referred to in Mr. Justice Prinsep's 5th edition of the Criminal Procedure Code, p. 209, under s. 295 of Act X of 1872, that where a case of improper discharge came before a District Magistrate, the proper and only course for him was to report the case for orders to the High Court, which, if of opinion that the accused was improperly discharged, might, under s. 297, direct a retrial. See *In re Dijobur Dutt*, I. L. R. 4 Cal. 647: *In re Troylukhyonath Mitter*, 1 C. L. R. 83. Apparently now the procedure, which ought ordinarily to be followed in such a case, is that laid down by this and the next two sections. The Court of Session or District Magistrate would have power under s. 438, *infra*, to report the case to the High Court.

Acquittal.—In a case where a private prosecutor sought to have a judgment of acquittal revised by a Sessions Court, the High Court said: "An appeal against an acquittal by way of revision is, in our opinion, not contemplated by the Code and should, we think, on public grounds be discharged. —*Thandavan* v. *Perianna*, I. L. R. 14 Mad. 363.

The High Court has no power to interfere where there is a difference of opinion between the Magistrate and the Judge as to the credibility of certain witnesses.—*Shaik Oodla* v. *Barkat*, 18 W. R. Cr. 7.

It seems doubtful whether the High Court as a Court of Revision has any power to reduce the amount of recognizances which may have been forfeited. The Magistrate of the District should, in such a case, address the Government. See *In re Noor-ool-Huk*, 2 C. L. R. 408: (S. C.) I. L. R. 3 Cal. 757.

A Sessions Judge has no power to direct a Division Magistrate to cancel his proceedings reviewing the calendars of Magistrates subordinate to him.—*Pro.*, 18*th August*, 1873; 7 *Mad. H. C. R. Appx.* xxvii.

The Magistrate of the District has jurisdiction to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. If the Magistrate of the District having, in the exercise of his authority, withdrawn any case, finds that it does not come within the jurisdiction of his Magistracy, he is not merely competent, but bound to refuse to proceed further with the case.—*Vilaetee Khanum* v. *Meher Ali*, 24 W. R. Cr. 4.

Under the former Code it was held that a Magistrate is not competent to refer the proceedings of a superior Court to the High Court.—*In re David*, 6 C. L. R. 245: *In re Ram Lall*, I. L. R. 8 Cal. 875. Under the present Code the Allahabad Court in order to avoid confusion and conflict of decision has laid down a rule that where the Sessions Judge has made an order under s. 437, a District Magistrate ought not to pass a contrary order on the matter being brought before him, if he thinks the order of the Judge is wrong, but that he should submit the matter to the High Court.—*Emp.* v. *Pirthi*, I. L. R. 12 All. 434. But it was also pointed out by the same Court that where a District Judge considers there has been a miscarriage of justice in the Court of Sessions, he ought not to refer to the High Court for orders under s. 438, *post*, but should communicate with the Public Prosecutor and invite his assistance to move the High Court with regard to the matter.—*Emp.* v. *Shere Sing*, I. L. R. 9 All. 362. But he should only do so in very special cases.—*Emp.* v. *Zor Singh*, I. L. R. 10 All. 146.

Where a Subdivisional Magistrate (a Joint Magistrate), after perusing the calendar of a case tried by a Magistrate subordinate to him (a second class Magistrate), sent for the record and passed an order under s. 195, *supra*, sanctioning the prosecution of a witness in the case for perjury, it was held that the order was illegal. The Court said: "If the Joint Magistrate wished himself to direct a prosecution, he should have acted under s. 476 of the Code of Criminal Procedure, and after some preliminary inquiry, including, I should think in this case, notice to the accused, he should have sent the case for inquiry to the nearest Magistrate of the 1st class.—*Queen* v. *Yendava Chandramma*, I. L. R. 7 Mad. 189. It may further be doubted whether the Joint Magistrate would have jurisdiction, even under s. 476 of the Code of Criminal Procedure, as the matter did not come under his notice in the course of a judicial proceeding as defined by s. 4 (*d*) of the Code of Criminal Procedure.—*Emp.* v. *Kupper*, I. L. R. 7 Mad. 560. There it appeared that one Nutchi had been charged under ss. 457 and 380 of the Indian Penal Code, and that the Magistrate disbelieving the evidence had discharged him on the ground that the case had been concocted. There was no complaint before the Joint Magistrate.

The working of the provisions of this section is somewhat limited by the extremely general terms of s. 537, which says that, subject to the provisions thereinbefore contained, no finding, sentence or order by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII, or on appeal or revision, on account of any error, omission, or irregularity in the complaint summons, warrant, charge, judgment, or other proceeding before or during trial or in any inquiry or other proceeding under this Code, or of the want of any sanction required by s. 195, or of the omission to revise any list of jurors or assessors in accordance with s. 324, or of any misdirection in any charge to a jury, unless such error, omission, irregularity, want, or misdirection had occasioned a failure of justice. The effect of that section is to leave it entirely to the discretion of the Revising or Appellate Court, whether it will interfere, and while some Benches are ready to admit the possibility of an accused person having been prejudiced by errors, omissions or other

irregularities, other Benches refuse to exercise their powers under s. 435, unless there is the clearest ground shown for alleging prejudice.

Where an offence is tried by a Court without jurisdiction, the proceedings are void under s. 530, *infra*. See *Emp.* v. *Hussin Gaibu*, I. L. R. 8 Bom. 307.

A Collector as such, it has been held, is not subject to the revisional jurisdiction of the High Court, and that Court in the exercise of such jurisdiction is not competent to deal with an alleged illegal order made under the Penal Code by a Collector. *In re Deanut Hosen*, 10 C. L. R. 14. In that case the Collector in certain butwara proceedings fined a mukhtear under s. 182 of the Penal Code for making false statements in support of a petition presented by his client.

Sessions Judges are to be guided by, but not to go beyond, the following instructions in communications with Magistrates :—

District Magistrates are to comply with all requisitions for records, returns, and information made by Sessions Judges with regard to any case appealable to them or referable by them to the High Court, whether decided by the District Magistrate or by the other Magisterial officers of the district, or made by Sessions Judges under the orders of the High Court in the exercise of their duty of superintendence over subordinate Courts. District Magistrates are also to render any explanation which Sessions Judges may require from them, and to obtain and submit any explanation which Sessions Judges may require from Subordinate Magistrates, in order to assist the Appellate Courts in respect of the three classes of cases above referred to.—*Cal. H. C. C. O., No.* 4 *of* 16*th December*, 1876; *Wilkins*, p. 124.

Upper Burma :—Reg. V of 1892 provides as follows :—

(1) The District Magistrate may in any case in which he has himself called for, or a Subdivisional Magistrate has forwarded to him, the record of a proceeding before a Magistrate of the second or of the third class pass such order in the case as he thinks fit.

Provided that he shall not pass a severer sentence for the offence which, in his opinion, the accused has committed than might have been passed for such offence by the Magistrate who tried the case, and that no order shall be made to the prejudice of the accused unless he has had an opportunity of showing cause against it.

(2) The Governor-General in Council or the Local Government may at any time, by notification in the official Gazette, direct that this section shall cease to be in force in any district with effect from a date to be specified in the notification.

The following rules are in force in Bombay :—

When the High Court calls on a Magistrate for the record of a case, which record has already been sent to the Sessions Court in appeal, the Magistrate shall make a return accordingly to the writ. When a case is called for at the same time both on appeal and by the High Court, in revision, the Magistrate shall comply with the order of the Court of Appeal, and make a return accordingly to the writ of the High Court.

In order to provide that a proper return to a writ of the Court of Session calling for records and proceedings may be made, no Magistrate shall part with the custody of the original papers of a case which it may be necessary to forward to the Police Commissioner, until the period within which an appeal can be made has expired, or the appeal has been disposed of.—*Bombay Gazette*, 1879, pp. 471, 475.

Copy of Appellate Court's Order to be certified with Proceedings called for by the High Court.—When proceedings are called for by the High Court from any Magistrate, the copy of any order made by the Appellate Court and transmitted to the lower Court shall be forwarded to the High Court with the record and proceedings of the Magistrate.—*Bombay Gazette*, 1879, pp. 471, 475.

Power to order commitment.

436. When, on examining the record of any case under section 435 or otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged :

Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made :

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

The words 'case triable exclusively by the Court of Session' are used instead of the words 'Sessions case,' which were used in the former Code. This alteration has been made apparently in consequence of the cases of *Reg.* v. *Seetul Pershad*, 5 All. 168 : *Joy Kurn Singh* v. *Man Patuck*, 21 W. R. 42 : *Emp.* v. *Kanchun Singh*, I. L. R. 1 All. 413 : *Emp.* v. *Hary Doyal Kurmokar*, I. L. R.

4 Cal. 16: (S. C.) 3 C. L. R. 263: *Emp.* v. *Tarachurn Bagdi*, 7 C. L. R. 168, where the term 'Sessions case' in s. 296 of Act X of 1872 was held to refer to cases triable by a Court of Session only.

The High Court has power under this section and ss. 439 and 423, if it consider that an accused person has been improperly discharged, to order him to be committed for trial.—*Emp.* v. *Ramlal Singh*, I. L. R. 6 All. 40, but in one case it was said, only where it considers that the accused is triable exclusively by the Court of Sessions.—*Emp.* v. *Sukha*, I. L. R. 8 All. 14. In a later case, however, it was held that the High Court had power to direct the commitment, where it considered that that was the order which should have been passed by the Magistrate.—*Emp.* v. *Abdul Rahman*, I. L. R. 16 Bom. 680.

The necessity for altering a conviction from one section to another for cognate offences when the accused has not been prejudiced is no sufficient ground for a reference to the Court of Revision.—*Emp.* v. *Ishan Chundra De*, I. L. R. 9 Cal. 847.

Fresh Inquiry.—In a case triable exclusively by the Sessions Court a District Magistrate under s. 436 is not restricted to order the commitment of the accused who may have been discharged, as that section contemplates a fresh inquiry being held.—*Emp.* v. *Mantruddin*, I. L. R. 18 Cal. 77.

But where a District Magistrate refers a case to a Subordinate Magistrate for further inquiry, the Subordinate Magistrate having previously discharged the accused, the District Magistrate has no right to fetter him in his discretion as to whether he should commit the case or not.—*Emp.* v. *Muniswmi*, I. L. R. 15 Mad. 39.

As to the use of term "inferior Court" in this section, see note to preceding section.

Proviso (*a*) to this section is new. It is an exception to the general rule laid down by s. 440, *post*. It follows the ruling in the case of *In re Bunthoo*, 22 W. R. Cr. 47, where it was said that it is a general principle of English law that no person shall be affected in his personal liberty without having an opportunity given him to answer the charge or matter of complaint for which he is arrested and put in prison; and that, acting upon this principle, the High Court, although there was nothing in s. 296 (of the old Code) with regard to summoning or giving notice to an accused person, almost never exercised its powers of revision to the detriment, or adversely to the interests, of any person without first giving him an opportunity of being heard in the matter. See also *In re Nowadi*, 24 W. R. Cr. 70: *In re Dwarkanath Bhuttacharjee*, 1. C. L. R. 93: *Reg.* v. *Dewma*, I. L. R. 1 Bom. 64: *In re Khamir*, I. L. R. 7 Cal. 602: (S. C.) 10 C. L. R. 8. In the last-mentioned case it was held, that the Court had power to direct the subordinate Court to inquire into any offence for which it considered a commitment should be ordered. Where an accused person had been discharged by a Subordinate Magistrate, and the District Magistrate directed the committal of the accused to the Court of Session under this section without calling upon him to show cause why he should not be committed, it was held that the order of committal and commitment made thereunder were illegal. —*Reg.* v. *Kanjamalai Padayachi*, I. L. R. 6 Mad. 372.

A Sessions Judge may, under this section, after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the Sessions.—*Syud Musmud Ali Chowdhry, Petitioner*, 7 W. R. Cr. 38. Whether he will do so or not is within his discretion, with the exercise of which the High Court will not interfere.—*Reg.* v. *Sheotaram Chowdry*, 2 W. R. Cr. 44.

Under the old Code it was held, that a Sessions Judge could direct a commitment only for some offence with which the accused was substantially charged in the complaint, or which was specified in the warrant, or which was framed as a formal charge by the Magistrate at the preliminary hearing.—*Reg.* v. *Tarruck Nath Mookerjee*, 19 W. R. Cr. 30: (S. C.) 10 B. L. R. 286: *Joy Kuru Singh* v. *Mun Patuck*, 21 W. R. Cr. 41. Otherwise, under the old Code, a man might have been committed by the Judge for trial of an offence, of which he had never been accused or never even heard a word, until he was apprehended under the commitment. Now, under proviso (*a*) he would have an opportunity of showing cause. A commitment made under this section without giving such an opportunity is illegal.—*Reg.* v. *Kanjamalai Padayachi*, I. L. R. 6 Mad. 372.

Where an order on the face of it appears to have been made without jurisdiction, no subsequent explanation can make it good.—*In the matter of Abdool* v. *Lucky Narain Mundul*, I. L. R. 5 Cal. 132, *per* BROUGHTON, J.

In cases exclusively triable by the Court of Session this section empowers the Court of Session or District Magistrate to order a discharged person to be committed for trial by the Court of Session or District Magistrate. But there is nothing in the section to show that, when such order is made the commitment thereupon must necessarily be made by the Magistrate who has discharged him, whilst the first proviso to it shows that it may be made by the Court of Session or by the District Magistrate according as the power under the section happens to be exercised by one or the other. *Emp.* v. *Krishnabhat*, I. L. R. 10 Bom. 319. A Court of Session may try a prisoner so committed to itself.—*Ib.*

Section 101 of the Mutiny Act (41 Vict. cap. 10) does not deprive the Criminal Courts of jurisdiction over British soldiers committing offences within the territorial limits of such Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief, and is merely permissive of a military trial being held.—*In re Felix Maguire*, 4 C. L. R. 432: (S. C.) I. L. R. 5 Cal. 124.

See the Andaman and Nicobar Islands Reg. III of 1876, s. 13.

Power to order inquiry.

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any Subordinate Magistrate to make, further inquiry

into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

As to subordination of Magistrates, see s. 17, *supra*, and the note to s. 236, *supra*.

This section gives the Sessions Court and District Magistrate the power (which was exercised solely by the High Court under the former Code of Criminal Procedure) of reviving a prosecution once dealt with by the Magistrate. See *Emp.* v. *Papadu*, I. L. R. 7 Mad. 454, p. 457: *In re Troylokhyanath Mitter*, 1 C. L. R. 83.

The section is general and applies to the case of any accused person who has been discharged, whether the case is exclusively triable by a Court of Sessions or not.—*Emp.* v. *Manirudin*, I. L. R. 18 Cal. 75.

It would seem that where further evidence is procurable, any Magistrate who has discharged an accused person might revive criminal proceedings before himself.—*Emp.* v. *Donnelly*, I. L. R. 2 Cal. 405. See cases cited in that case.

In the case of *Emp.* v. *Bhup Singh*, I. L. R. 2 All. 771, a Sessions Judge, after having asked the assessors their opinion in a case which was being tried, suspended the trial of the case, and made a reference to the High Court on a question of jurisdiction which had arisen in the case; and it was held, that it was not intended that the section should so be used, and that the Sessions Judge was bound to dispose of such question himself.

A Deputy Magistrate placed in charge of the current duties of the District Magistrate's office is not thereby vested with jurisdiction under this section.—*Ramanund Mahton* v. *Koylash Mahton*, I. L. R. 11 Cal. 236.

Further Inquiry.—There appears to have been some slight conflict in the decisions of the High Court as to the circumstances under which "further inquiry" may be ordered. In the case of *Chundi Bhattacharjee*, I. L. R. 10 Cal. 207, MITTER and FIELD, JJ., held, that the "further inquiry" contemplated by the section was an inquiry upon further materials and not a re-hearing upon the same evidence which was before the Magistrate who held the first inquiry. So in the case of *Joshun Kristo Roy* v. *Shib Chunder Dass*, I. L. R. 10 Cal. 1027, TOTTENHAM and NORRIS, JJ., held that the law allowed a "further inquiry" only where there had not been a full inquiry, and where further evidence was disclosed. In that case there had been a full inquiry, and after all the evidence for the prosecution had been taken, the Deputy Magistrate, who disbelieved the evidence, discharged the accused under s. 253. The District Judge ordered a further inquiry on the ground that he considered that there was sufficient evidence to support the case of the prosecution, and that the Deputy Magistrate's order was "a long and laboured effort to explain away the evidence for the prosecution." See *Darsan Lall* v. *Junuk Lall*, I. L. R. 12 Cal. 522.

These cases, it need hardly be pointed out, turned entirely upon the evidence. It is quite possible, however, that an order dismissing a complaint under s. 203, or discharging an accused person under s. 253 of the Code, may have been the result of the Magistrate having omitted to take portions of the evidence into consideration, or having taken an entirely wrong view of the law applicable to the facts in evidence. It would seem not unreasonable in such case for the Court exercising powers under this section to point out the omission or in what respect the view taken of the law was wrong, and to direct a further inquiry upon the same evidence, regard being had to the order made by the Court directing the inquiry. This view was apparently adopted by the High Court at Calcutta in two unreported cases, in both of which the cases of *Chundi Bhattacharjee*, I. L. R. 10 Cal. 207, and *Jiban Kristo Roy* v. *Shib Chunder Das*, I. L. R. 10 Cal. 1027, were cited. The former (*In re Bolaki Hujjam*, Criminal Rule from Begusarai, No. 9 of 1885, decided 20th January 1885) of these cases was decided by MCDONELL and MACPHERSON, JJ.

In the other unreported case referred to (*In re Sheo Narain*, Criminal Rule from Sarun, No. 147 of 1885, decided 23rd May, 1885), a Joint Magistrate discharged the accused who were charged with riot, grievous hurt, and assault. They pleaded an *alibi*. The alleged riot had reference to a narrow strip of land, and an issue was raised as to whether it belonged to the complainant or to the accused. There was a considerable body of evidence to show that it belonged to the complainant; but there was no evidence on the record (although an extrajudical order of another Magistrate was relied on to prove it which it did not) to prove that it belonged to the accused. The Magistrate held that there was no evidence that the land did belong to the complainant, but that from the nature of the situation of the strip of land, it must be assumed to have belonged to the accused, who held the adjoining land, and disregarding the plea of *alibi* set up, he discharged the accused on the ground that *they had acted in self-defence*. There had been a full inquiry, all the witnesses for the prosecution having been called and examined. The High Court (MITTER and MCDONELL, JJ.) reversed the order. The rule upon which the High Court acted was granted by PRINSEP and PIGOT, JJ.

In the case of *Emp.* v. *Amir Khan*, I. L. R. 8 Mad. 336, the Madras Court, while it held that where a person had been discharged, futher inquiry could not be directed under s. 437 on the ground that the Magistrate had not rightly appreciated the credit due to the witnesses, considered that further inquiry should only be directed when other witnesses might have been examined, or when witnesses had not been properly examined, and that, inasmuch as the section (437) does not direct that the evidence already taken should be taken again, the further inquiry should ordinarily be made by the Magistrate who made the original inquiry. TURNER, C.J., in delivering the judgment of the Court, said: "The conclusion at which we arrive as to the meaning of 'further inquiry' is in accordance with the decisions of the Calcutta High Court."

Where a Deputy Magistrate discharged a person accused of an offence on the ground that the evidence was insufficient for a conviction, the Magistrate of the District recorded an order, stating that in his opinion the accused had been improperly discharged, and directing under s. 437 that further inquiry should be made, and the accused called upon to enter upon his defence. He was tried

by the Magistrate of the District, convicted and sentenced; but the witnesses for the prosecution were not re-called. It was held the subsequent proceedings of the District Magistrate were bad, inasmuch as the conviction was based practically upon evidence not recorded in the course of a "further inquiry" before him, but upon evidence recorded by the Deputy Magistrate.—*Emp.* v. *Hasnu*, I. L. R. 6 All. 367.

In the case of *Dhania* v. *Clifford*, I. L. R. 13 Bom. 376, where on revision it appeared to the High Court that the Magistrate who had discharged the accused had wrongly omitted to take into consideration the admission made by the accused, the High Court considered that the inquiry was necessarily incomplete and imperfect, and directed a further inquiry. So in *Emp.* v. *Balasumatambi*, I. L. R. 14 Mad. 334, it was held, the term inquiry was not restricted in its ordinary acceptation to the mere taking of evidence, but it included also a consideration of its effect in relation to the complaint forming the subject of the inquiry, and that there was no reason why the expression "further inquiry" should not signify as well a fresh consideration of the effect of the evidence already recorded as a supplemental inquiry upon fresh evidence.

In *Hurt Dass Sanyal* v. *Sartiulla*, I. L. R. 15 Cal. 608, it was held by a majority of the Full Bench that after an inquiry by a Subordinate Magistrate and the discharge of an accused person a Sessions Judge or District Magistrate has jurisdiction under s. 437 to order a "further inquiry" or a re-hearing upon the same materials which were before the Subordinate Magistrate, *i.e.*, when no further evidence is forthcoming; but, PRINSEP J., dissenting, that the words "further inquiry" in that section mean the inquiry preliminary to trial which regularly results in a charge or discharge and do not include a trial, and if on the evidence taken the accused ought to be committed, then in a case triable only at the Sessions, the proper course is to commit under s. 436, in other cases to refer to the High Court. WILSON, J., in delivering the judgment of the majority of the Court, said: "The result is that, in my opinion, this Court or the Court of Sessions or the District Magistrate has jurisdiction on any sufficient ground to set aside an order of discharge, and direct either an additional investigation of the facts, or a reconsideration of the evidence, by the Magistrate whose order is set aside, or a new inquiry before another Magistrate; and among such sufficient grounds are the omission to take evidence which ought to have been taken, the discovery of fresh evidence, mistakes of law, illegality or irregularity in the proceedings, and the incorrectness of the first finding. I agree with the view taken in the Bombay High Court in *Queen-Emp.* v. *Dorabji Hormasji*, I. L. R. 10 Bom. 131, and to a great extent with that taken by the Full Bench of the Allahabad Court in *Queen-Emp.* v. *Chotu*, I. L. R. 9 All. 52.

"But although the jurisdiction of this Court and of the Court of Session and of the District Magistrate is upon this view a very wide one, the discretion thus conferred is a judicial discretion. No Court can properly set aside an order of discharge without having and assigning solid and sufficient reasons for doing so. And if there is reason to set aside an order of discharge, it is the duty of the Court which has to deal with the matter in each case to make such order as is appropriate to the facts of the case. In a case triable only by the Sessions Court, to which s. 436 applies, if the Sessions Judge or the District Magistrate is satisfied that on the evidence taken there is a clear case for a committal, and there is no reason for desiring a further consideration by a Magistrate, I think it would ordinarily be his duty to direct a committal under s. 436, and not to order a further inquiry under s. 437. In the same way, in a case not triable only by the Court of Sessions, if the Sessions Judge or the District Magistrate is satisfied that on the evidence taken there is a clear case for charging and trying the accused, and there is no reason for desiring further magisterial examination, I think it is ordinarily his duty to refer the case to this Court, which can make a suitable order, and not to direct a further inquiry by a Magistrate." PETHERAM, C. J., and GHOSE J., were of opinion that it was not intended that the further inquiry should be granted simply for the reconsideration of the evidence, but that it should be confined to cases in which the revising officer is satisfied that the subordinate officer has proceeded on insufficient materials, and that with a more exhaustive inquiry further material would be forthcoming.

In the case of *Emp.* v. *Dorabji Hormasji*, I. L. R. 10 Bom. 131, it was held that, where a complaint had been dismissed under s. 203 of the Code, or an accused person discharged by a Subordinate Magistrate, the District Magistrate had power under s. 437 to direct any Magistrate subordinate to him to make further inquiry into the complaint dismissed, or into the case of the accused person discharged, even if there were no additional evidence disclosed or allegation that such existed "further inquiry" not being restricted to "inquiry upon further materials or additional evidence." In that case the cases of *Chundi Churn Bhuttacharjee* v. *Hem Chunder Banerjee*, I. L. R. 10 Cal. 207: *Jeshun Kristo Roy* v. *Shib Chunder Das*, I. L. R. 10 Cal. 1027: *Emp.* v. *Hasnu*, I. L. R. 6 All. 367, and *Emp.* v. *Amir Khan*, I. L. R. 8 Mad. 336, were commented on. See *Sahib Kour* v. *Kasim*, Punj. Rec., 1891, p. 41, and *Harbaj Roy*, Punj. Rec., 1887, p. 174.

In Allahabad the Full Bench held that the High Court or Court of Session in such a case had jurisdiction to direct further inquiry on the same materials, and a District Magistrate might, under like circumstances, himself hold further inquiry or direct further inquiry by a Subordinate Judge.—*Emp.* v. *Chotu*, I. L. R. 9 All. 52. The Court there dissented from *Emp.* v. *Bhola Singh*, Weekly Notes, 1883, p. 150: *Emp.* v. *Hasnu*, I. L. R. 6 All. 367: *Chundi Churn Bhuttacharjee* v. *Hem Chunder Banerjee*, I. L. R. 10 Cal. 207: *Jeshun Kristo Roy* v. *Shib Chunder Dass*, I.L.R. 10 Cal. 1027: *Darsun Lall* v. *Jamuk Lall*, I. L. R. 12 Cal. 522: *Emp.* v. *Amir Khan*, I. L. R. 8 Mad. 336. The Madras High Court has also lately held that a Sessions Judge has power to direct a further inquiry to be held where additional evidence is not forthcoming.—*Emp.* v. *Balasumatambi*, I. L. R. 14 Mad. 334.

A District Magistrate who directs a Subordinate Magistrate who has previously discharged an accused to make a further inquiry is not justified in interfering with his discretion as to whether he will commit or not after making the fresh inquiry.—*Emp.* v. *Muniswami*, I. L. R. 14 Mad. 39.

In the case of *Emp.* v. *Papadu*, I. L. R. 7 Mad. 455, an order directing a further inquiry was held to be good, where the Magistrate on the original hearing had taken the evidence of the accused and his witnesses, and disbelieving that evidence, had discharged the accused. In considering, it was held under s. 297 of the former Code, whether a person, has been improperly discharged by a

Magistrate, the High Court is not restricted to an error of law only, but may order a trial where *prima facie* the evidence establishes a case against the accused to which he should be required to enter in his defence.—*In re Troylokhoyanath Mitter*, 1 C. L. R. 83. See *In re Mohesh Mistree*, I. L. R. 1 Cal. 282; *In re Nobin Kishun Mookerjee* v. *Russick Lal Laha*, I. L. R. 10 Cal. 1047.

In the case of *Emp.* v. *Erramreddi*, I. L. R. 8 Mad. 290, the accused, being charged with theft and mischief in respect of certain branches of a tree, was tried by a Subordinate Magistrate on the charge of theft, and acquitted on the ground that as against the complainant he had title to the tree. On the application of the complainant, the District Magistrate directed further inquiry under s. 437, and on reference to the Court of Sessions, the Sessions Judge held that as no inquiry into the charge of theft had been held, the order was legal. The High Court held that the District Magistrate had no power to pass such an order.

Notice.—The High Court at Allahabad apparently considers that notice calling upon an accused person to show cause why action should not be taken against him before an adverse order is made under this section, directing a further inquiry, is necessary.—*Emp.* v. *Hansa*, I. L. R. 6 All. 367; *Emp.* v. *Chotu*, I. L. R. 9 All. 52 (F.B.). In the case of *Chundi Churn Bhattacharjee*, I. L. R. 10 Cal. 207, MITTER and FIELD, J.J., expressed an opinion that in that case the accused ought to have had notice in order to enable him to appear and show cause why an order should not have been made under s. 437 against him. In a subsequent case, *Nobin Kristo Mookerjee* v. *Russick Lall Laha*, I. L. R. 10 Cal. 268, see p. 273, however, where that case was considered, FIELD, J., explained that it was not intended in the case of *Chundi Churn Bhuttacharjee* to lay down a general rule, and that the opinion expressed by the Court in that case had reference to the particular facts of the case.

The question as to whether the notice is necessary before directing further inquiry was discussed in *Emp.* v. *Daraiji Hormasji*, I. L. R. 10 Bom. 130; and it was held not to be absolutely necessary, though the Court considered that in such cases it is well that notice should be given. The general principle of criminal jurisprudence is, that no order prejudicially affecting an accused person should be passed without giving him an opportunity of being heard.

Section 440 provides that "no party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect s. 439, paragraph 2," and the Court expressed an opinion, in the case of *Nobin Kristo Mookerjee* v. *Russick Lall Laha*, I. L. R. 10 Cal. 268, that, as a matter of strict law, the accused was not entitled to be heard by a District Magistrate before he granted order directing an inquiry under s. 437. See *Reg.* v. *Devama*, I. L. R. 1 Bom. 64.

The powers conferred by s. 437 should be used sparingly, with great caution and circumspection especially in case where the questions involved are more matters of fact.—*Emp.* v. *Chotu*, I. L. R. 9 All. 52 (F. B.). See *Emp.* v. *Gayadin*, I. L. R. 4 All. 148.

In the case of *Emp.* v. *Papadu*, I. L. R. 7 Mad. 455, the accused six in number, were charged with rioting. The Magistrate took the evidence of complainant and of his witnesses, and having recorded that the charge was not proved, discharged the accused under s. 253, *supra*. The Sessions Judge under this section ordered a further inquiry, and the Magistrate took the case on his file again, and the complainant called further witnesses, and it was found there had been no riot, but that two of the accused had committed an assault. It was held that the Magistrate had power on the further inquiry to convict these two of assault. It will be observed that in this case further inquiry was ordered after the complainant and his witnesses had been examined.

While in the case of *Chundi Churn Bhuttacharjee*, I. L. R. 10 Cal. 207, it was said that a Sessions Judge has no power under this section to direct a particular Magistrate by name to make the further inquiry contemplated by the section, in the case of *Emp.* v. *Amir Khan*, I. L. R. 8 Mad. 336, the Court expressed an opinion that ordinarily the further inquiry should be made by the Magistrate who made the original inquiry.

Practice.—In Allahabad in order to avoid confusion and conflict of decision the High Court has made a rule that where a Sessions Judge has passed order under s. 437 a District Magistrate, ought not on the matter being brought before him to pass a contrary order if he think the Judge's order wrong, but should submit the case to the High Court.—*Emp.* v. *Pirthi*, I. L. R. 12 All. 434. See *Emp.* v. *Shere Singh*, I. L. R. 9 All. 362.

Report to High Court.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement, that he be released on bail or on his own bond.

Upper Burma.—In Upper Burma, except the Sham States, Reg. V, of 1892, Sched. (XII) provides :—

Revision (Sections 435 to 438).

(1) The District Magistrate may in any case in which he has himself called for, or a Sub-divisional Magistrate has forwarded to him, the record of a proceeding before a Magistrate of the second or of the third class, pass such order in the case as he thinks fit :

Provided that he shall not pass a severer sentence for the offence which, in his opinion, the accused has committed, than might have been passed for such offence by the Magistrate who tried the case, and that no order shall be made to the prejudice of the accused, unless he has had an opportunity of showing cause against it.

(2) The Governor General in Council or the Local Government may at any time, by notification in the Official Gazette, direct that this section shall cease to be in force from a date to be specified in the notification.

The provision empowering the Court reporting to the High Court, when the report recommends that the sentence be reversed, to suspend the execution of the sentence and to release the accused on bail, is new. Such power was by s. 297 of Act X of 1872 conferred on the High Court only.

The Court would have no power under this section to admit the accused person to bail if the report did not recommend that the sentence be reversed. See *Kanhai Sahu's Case*, 23 W. R. Cr. 40: *Mohesh Mundul* v. *Bholanath Mundul*, 3 C. L. R. 404.

If a District Magistrate in a case in which he is not competent to report to the High Court, makes such a report, an order by him admitting the accused to bail is bad.—*Hiraman De* v. *Ram Kumar Ain*, I. L. R. 18 Cal. 186.

A Sessions Court, in referring a case under this section, may possibly, however, under s. 498, *infra*, admit the accused to bail.

A Joint Magistrate of a District has no power to make a reference to the High Court under this section. Such references can be made only by a Sessions Judge or by a Magistrate of a District.—*Reg.* v. *Chooramoni Sant*, 14 W. R. Cr. 25.

As to bail, see Chap XXXIX, *infra*.

Where an offence is tried by a Court without jurisdiction, the proceedings are void under s. 530, and it is not necessary, in case of an acquittal, for the High Court to upset the acquittal before a re-trial can be had under s. 403.—*Emp.* v. *Hussin Gaibu*, I. L. R. 8 Bom. 307.

In a case where a Sessions Judge has called for the record of an inferior Court, he is, before referring the case to the High Court for orders, bound to call upon the inferior Court for an explanation of the order passed, and should transmit such explanation together with the rest of the record to the High Court.—*Mallamdi Fakir* v. *Taripullah Pramanik*, I. L. R. 8 Cal. 644.

Section 440 provides that "no party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect s. 439, paragraph 2," and the Court expressed an opinion, in the case of *Nobin Kristo Mookerjee* v. *Russick Lall Laha*, I. L. R. 10 Cal. 268, that, as a matter of strict law, the accused was not entitled to be heard by a District Magistrate before he granted an order directing an inquiry under s. 437. See *Reg.* v. *Devama*, I. L. R. 1 Bom. 64.

When a Sessions Judge considers that a judgment or order is contrary to law, or that the punishment is too severe, he should report the proceedings to the High Court in the manner prescribed by the Circular Order of the 15th July 1863, which is applicable to references under this section.—*Rajkristo Paul* v. *Nityanund Paul*, 20 W. R. Cr. 50.

If the Sessions Judge is competent to deal with a case appealed to him, he should not refer it to the High Court (*In re Sree Kissen*, 9 W. R. Cr. 5: *Reg.* v. *Nusseeroodden Shaswal*, 11 W. R. Cr. 24): and a Magistrate should exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every case in which he may detect an error.—*Nibarun Chunder Dass* v. *Bhuggobutty Churn Chatterjee*, 20 W. R. Cr. 40.

A District Magistrate who considers that there has been a miscarriage of justice in the Sessions Court ought not to report the case under this section to the High Court but should communicate with the Public Prosecutor or Legal Remembrancer as to the case in which he thinks the miscarriage has occurred and with his assistance to move the High Court with regard to it.—*Emp.* v. *Shera Singh*, I. L. R. 9 All. 302 *Hiraman De* v. *Ram Kumar Ain*, I. L. R. 18 Cal. 186. But he should only do so in very special cases.—*Emp.* v. *Zor Singh*, I. L. R. 10 All. 146. Where, however, a Sessions Judge has made an order under s. 437 which the District Magistrate upon application being made to him considers wrong he ought not to pass a contrary order, but should report the matter to the High Court so as to avoid conflict of decision.—*Emp.* v. *Pirthi*, 1. L. R. 12 All. 302.

Sentence.—Having regard to the terms of the section it seems doubtful whether this section would apply in the case of proceedings where no sentence is passed—*e.g.*, proceedings under s. 145, *supra*.

Reports under this section should always be accompained by the records of the case to which they relate and by an English letter commencing: "Under s 438 of Act X of 1882, I herewith transmit the record of the case noted in the margin, to be laid before the High Court, with the following report." There will then be stated—

1*st*.—A brief analysis of the case

2*nd*.—The order recommended for revision.

3*rd*.—In what particular portion of that order the Court making the reference considers an error on a point of law to exist.

4*th*.—The grounds upon which, in the opinion of such Court, the order should be reversed.

Unless there be any particular reason why delay should be avoided, the explanation of the Magistrate who passed the order should be called for and accompany the reference.—*Cal. H. C. C. O., No.* 18 *of* 15*th July*, 1863; *Wilkins*, pp. 124, 125.

In Madras the following orders have been passed by the High Court

A reference should contain the opinion of the officer referring the proceedings and the grounds upon which such opinion is based (*Mad H C Pro 4th November* 1864) and a copy of the proceedings if in English or if in the vernacular an English translation thereof must be sent up with all cases referred —*Mad H C Pro 14th December* 1865

The fact of there being no evidence to support a conviction is a question of law and affords ground for a reference The fact of the evidence being insufficient is a question of fact and affords no such ground *Mad H C Pro 30th October* 1867 *Mad H C Pro 29th November* 1869 See also *In re Kishen Soonder Buttacharjee*, 12 W R Cr 47

A District Magistrate is not bound in opposition to his own opinion, to report proceedings for the orders of the High Court —*Mad H C Pro 19th March* 1873

References in cases in which accused persons have been illegally sentenced to imprisonment and whipping should state whether the sentence of whipping has been carried into execution or not — *Mad H C Pro , 5th November* 1878

In all references only the material parts of the record need be sent up to the High Court.— *Mad H C Pro 16th September* 1879 *Weir* p 43

In Bombay all references submitted to the High Court under this section are to be accompanied by the referring officer's opinion, by the record of the case, and a statement of the case in English giving—

1 A brief abstract of the case

2 The sentence or order of the lower Court, and the name of, and powers exercised by, the Magistrate passing it

3 The particular portion of the sentence or order in which an error on a point of law is believed to exist

4 The grounds upon which the order of the lower Court should be reversed or modified

Note – It should also be stated how much of the sentence the accused has undergone and if he has been sentenced to fine or whipping whether the fine has been realized or the whipping has been inflicted —*Bom H C Cir , 46a*

Affidavits in support of Applications to the High Court by whom to be verified —When any person desires to make any application to the High Court in its civil or criminal jurisdiction and to support the same by an affidavit or statement on solemn affirmation any Court or Magistrate or the Clerk of a District Court shall on application, take such affidavit or statement on solemn affirmation and authenticate the same by signature —*Bombay Gazette*, 1879 pp 471, 475

The following rules are in force in the Punjab —

Cases submitted to the Chief Court for revision of sentence should always be accompanied by the records and by a statement of the case in English *viz*—*first*, a brief abstract of the case, *secondly* the sentence or order of the lower Court and the name of and the powers exercised by, the Magistrate passing it, *thirdly* the particular portion of the sentence or order in which an error of law was believed to exist *fourthly*, the grounds upon which the order of the lower Court should be reversed or modified It should also be noted how much of the sentence the accused has undergone and if he has been sentenced to fine or whipping, whether the fine has been realized or the whipping inflicted

A distinction should be drawn between illegal sentences and irregular procedure The former must in all cases be sent up to the Chief Court because no other Court is competent to alter a sentence or order except on appeal In the latter class of cases it is discretional with the Commissioner or Deputy Commissioner to refer the proceedings to the Chief Court for orders

Cases should be reported for revision in the annexed form :—

REVISION SIDE CRIMINAL

Cases reported by Commissioner (or Deputy Commissioner) under section 296 of Criminal Procedure Code , with No of

THE CROWN *versus* Accused

Charge

The facts of this case are as follows —

The accused, on conviction by Magistrate of in the exercising the powers of a district, was sentenced under section of the Indian Penal Code to The proceedings are forwarded for revision on the following grounds

(*Here state grounds*)

The Officer Commissioner (*or Deputy Commissioner*)

—*Smyth*, p 108

When the District Magistrate has by forwarding the proceedings of a first class Magistrate to the High Court under this section, put it out of the power of an appellant to obtain a copy of the judgment the Sessions Court should accept the petition of appeal though not accompanied by a copy of the judgment as required by law The Sessions Court should then immediately write to the High Court, stating that an appeal has been made and asking for the return of the record and proceedings The High Court will thereupon stay the exercise of its revisional jurisdiction, and await a report from the Sessions Court of the result of the appeal 7*th May* 1881 *Bom Cr* p 15

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

High Court's powers of revision.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

Compare Act X of 1872, s. 297. The second, third, and fourth paragraphs are new. This section, like s. 435, is not in terms confined to 'judicial proceedings,' but refers to 'any proceeding.' In addition to the powers of revision which may be exercised by the High Court, the powers conferred on a Court of Appeal by s. 195, or on a Court by s. 338 and the power of enhancing a sentence have been conferred.

The second paragraph of the section is an exception to the rule laid down by the next section.

Acquittal.—The last paragraph of the section makes it clear that the High Court cannot under this section convert a finding of acquittal into one of conviction. In many cases under the former Code the High Court refused to interfere with an acquittal, the reason being that the Government had the right to appeal, and that if it did not choose to do so, the Court would not set aside the acquittal.—*Reg.* v. *Toyab Sheikh*, 5 W. R. Cr. 2 *Reg.* v. *Sobeel Mahi*, *ib.* 32: *Reg.* v. *Dorabji Palabhi*, 11 Bom., H. C. R. 117: *Reg.* v. *Hatoo Khan*, 21 W. R. Cr. 21: (8.C.) 12 B. L. R Appx. 22: *Reg.* v. *Golam Ismail* I. L. R. All. 7: *Emp.* v. *Miyajt Ahmed*, I. L. R. 3 Bom. 150 *Emp* v. *Chedi Rai*, 7 C. L. R. 142. Even where the acquittal was an error of law, the Court refused to interfere.—*In re Hardeo*, I. L. R 1 All. (F.B) 130.

But while the High Court has no power to convert a finding of acquittal into a one of conviction, it has power to revise an order of acquittal. It may in case of an acquittal on appeal by a Sessions Court reverse the order and direct a re trial of the appeal.– *Emp.* v. *Balwant*, I. L. R. 9 All. 134 (F.B.) As, however, there is an appeal on behalf of Government from an acquittal, attempts to obtain virtually an appeal from such a finding in proceedings for revision should on public grounds be discouraged.—*Thandavan* v. *Periaswa*, I. L. R. 14 Mad. 363. Ordinarily the High Court will not interfere with such an order in the exercise of its revisional jurisdiction. *Haserahat* v. *Framji*, I. L. R. 15 Bom. 349 *Emp. Ata Baksh*, I. L R. 6 All. 484. See *Emp.* v. *Lalji*, Punj. Rec., 1883 p. 41. It is the rule in the Calcutta HighCourt not to interfere in revision with an acquittal.—*In re Municipal Committee of Dacca* v. *Hingoo Ray*, I. L. R. 8 Cal. 805.

Section 195 deals with sanction to prosecute in case of offences in contempt of the lawful authority of public servants, or against public justice or relating to documents given in evidence; s. 423 gives the powers of Appellate Courts in disposing of appeals; s 426 relates to the suspension of sentence pending appeal and to releasing appellants on bail; s. 427 gives the Court power to arrest an accused in case of an appeal from an acquittal; s. 428 empowers the Court to take further evidence or direct it to be taken, and s. 338 gives the Court power to direct a tender of pardon.

The provisions of this section in no way affect the powers of the High Court as a Court of Revision vested in it by the High Courts' Act.—*In re Chakowri Lall* v. *Moti Kurmi*, 13 C. L. R. 275.

Interference with Findings of Fact.—The Court will not, as a rule, on revision, go into the evidence and examine the conclusions of the Court below, otherwise an appeal would virtually lie against every decision of the subordinate Courts, which was clearly not intended by the Legislature. It is only where there are exceptional grounds for its interference in the interests of justice that the High Court interferes in the exercise of its revisonal jurisdiction with the findings of fact of inferior Courts. *Emp.* v. *Chajan Dayaram*, I. L. R. 14 Bom. 331 *Reid* v. *Richardson*, I. L. R. 14 Cal. 361. See *Raja Baboo* v. *Maddon Mohun Lall*, I. L. R. 14 Cal. 109. *Emp.* v. *Shaikh Sahib Rudin*, I. L. R. 8 Bom. 197 *Bhawoo* v. *Mulji*, I. L. R. 12 Bom. 377: *Nobin Krishna Mukerjee* v. *Russick Lall*, I. L. R. 10 Cal. 1047. *Emp.* v. *Balwant*, I. L. R 9 All. 134: *Emp.* v. *Ata Baksh*, I. L.R. 6 All. 485.

It is not because circumstances occur to the Magistrate of a District which would render necessary a more severe sentence than that passed, or a different charge than that framed by a Deputy Magistrate that the High Court should interfere. There must be matter on the record of the case

showing that the charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence.—*Reg.* v. *Hurnath Sing*, 20 W. R. Cr. 22.

A valid conviction, arrived at by a Magistrate who had jurisdiction in the matter, cannot be set aside simply because subsequent to the trial and conviction fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted.—*Reg.* v. *Ramdoyal Mahara*, 21 W. R. Cr. 47.

Certain persons were convicted by a Magistrate of the first class of assault. The case was brought to the knowledge of the High Court by the complainant preferring a petition to it, together with a copy of the Magistrate's order. This petition was laid before a Judge of the High Court, who, observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace, directed the Magistrate to summon them to show cause why they should not be required to enter into a bond to keep the peace. The Magistrate accordingly issued summonses which purported to be issued "under the orders of the High Court." Evidence was taken, and an order made requiring such persons to enter into a bond. They then, having knowledge of the order of the Judge, applied to the High Court to set aside the order requiring them to keep the peace, on the ground that the Magistrate had not proceeded of his own motion, but under the Judge's order, which, they contended, was made without jurisdiction, and also, that the summonses had not set forth the report or information on which they were issued. It was held, that the Judge's order was one which he was competent to make as a Court of Session; and that, inasmuch as the applicants had not been in the slightest degree prejudiced by the defect in the summonses which were issued, the defect mentioned was not a ground upon which to set aside the Magistrate's order.—*Emp.* v. *Mahamed Jafir*, I. L. R. 3 All. 545.

Enchancement of Sentence.—By s. 423 *supra*, the power which an Appellate Court, as such, had under s. 250 of the repealed Code, to enhance a sentence has been expressly removed, and its capacity to interfere with the punishment awarded by the trying Court is now limited among other matters to altering the nature of the sentence, "but not so as to enhance the same." This section (439) confers on High Courts (and on High Courts only) the power to do all that may be done by an Appellate Court under ss. 423 and 426, and in terms declares that they may do what an Appellate Court cannot, namely, "enhance the sentence." Accordingly it has been held by a Full Bench of the Allahabad High Court that a High Court in the exercise of its powers of revision can enhance a sentence so as to alter its nature.—*Emp.* v. *Ram Kurla*, I. L. R. 6 All. (F. B.) 622.

In the case of *Emp.* v. *Mehter Ali*, I. L. R. 11 Cal. 530, a Police Head Constable, convicted under s. 330 of the Penal Code, was sentenced by a Sessions Court to three months' simple imprisonment. In dismissing the appeal, PRINSEP and PIGOT, JJ., enhanced the sentence to six months' rigorous imprisonment. On the attention of the Court being called to s. 423, *supra*, they held that they were competent to enhance the sentence under this section, the provisions of which must be read with s. 425.

The practice of the Punjab Chief Court with regard to enhancing sentences is fully stated in the case of *Emp.* v. *Chunni Lal*.—Punj. Rec. 1889, p. 44.

Where the Local Government being of opinion that a sentence passed under s. 326 of the Indian Penal Code by a Presidency Magistrate was inadequate and moved the High Court to quash the proceedings and order the accused to be committed for trial to the High Court, it was contended that as the offence was not exclusively triable by the Court of Sessions the High Court had no power under 423 (*b*) to order the accused to be committed. The High Court held, dissenting from *Emp.* v. *Sukha*, I. L. R. 8 All. 14, that it had the power to order the commitment where it considered that that was the procedure which ought to have been adopted by the Magistrate.—*Emp.* v. *Abdul Rahim*, I. L. R. 16 Bom. 580.

Paragraph 1 of s. 297 of Act X of 1872 provided that when it appeared to the High Court, that there had been a 'material error' in any judicial proceeding of any Court subordinate to it, it might pass such sentence, judgment or order thereon as it thought fit. The words 'material error' do not occur in the present Code, but the following cases will be found of use in considering whether a case had been made out for the interference of the Court.

'Material error' means an error in law or procedure which affects the decision (*Debi Churn Biswas, Petitioner*, 20 W. R. Cr. 40), or has occasioned a failure of justice.—*Reg.* v. *Ramkanoo*, 10 W. R. Cr. 28: *Sonaton Dass* v. *Gooroo Churn Dewan*, 21 W. R. Cr. 88.

A decision given on evidence which was in some parts discrepant, and about the credibility of which there might be considerable question, would not, even if the High Court thought the evidence doubtful, be a material error in a judicial proceeding within the meaning of this section.—*Hurl Pershad, Petitioner*, 24 W. R. Cr. 60; and see *In the matter of Aurokiam*, I. L. R. 2 Mad 38.

A Magistrate ought not himself to be a witness in a case in which he is sole judge of law and fact.—*Emp.* v. *Donnelly*, I. L. R. 2 Cal. 405: *Queen* v. *Mukta Singh*, 4 B. L. R. Ap. Cr. 15. In the former case the following remarks were made by MARKBY, J.:—"In my opinion the evidence of the Judge being practically incapable of challenge or contradiction ought not to have been taken. Moreover, a Court of Appeal is not a check in the same way that Judges sitting together are a check upon each other . . . . . Upon this ground the conviction is bad." PRINSEP, J., however, was of opinion that the conviction was not absolutely bad upon this ground, but that it was open to the Court to uphold the conviction, if it were of opinion that, after rejecting the Magistrate's evidence, there was other evidence sufficient, if believed, to support the conviction. See *Wood* v. *The Corporation of Calcutta*, I. L. R. 7 Cal. 322. But the mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that the case should be referred to another Magistrate.—*In re Basapa*, I. L. R. 9 Bom 172. See *Wood* v. *Corporation of Calcutta*, I. L. R. 7 Cal. 322: *Dimes* v. *Proprietors of the Grand Junction Canal*, 3 H. L. Cas. p. 793, and note to s. 555, *infra*.

Under the provisions of this section the High Court may exercise its powers of revision upon information in whatever way received.—*In re Aurokiam*, I. L. R. 2 Mad. 38. In that case it

appeared that, in the course of a serious riot, one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the accused praying the Court to exercise their powers of revision, the Court held, that it had jurisdiction under s. 297 of Act X of 1872. See *In the matter of Hardeo*, I. L. R. 1 All. 139.

The Court can deal by way of revision with the case of a prisoner who does not appeal, and is authorized to pass such 'order,' sentence or judgment as it thinks fit.—*Queen* v. *Jafir Ali*, 19 W. R. Cr. 57.

Although the Code of Criminal Procedure gives no right to the heir, devisee, executor, or any other representative of a deceased convict to lodge an appeal or continue an appeal already lodged, the High Court may call for the record of the case under s. 423 with a view to revision and rectification, and may make such order thereon as it may consider just.—*Emp.* v. *Dongaji Andaji*, I. L. R. 2 Bom. 504. See notes to s. 431, *supra*.

In *In the matter of Aurokiam*, I. L. R. 2 Mad. 38, the Madras High Court held, that it was not intended by the Legislature that the powers given by cl. 1 of s. 297, Criminal Procedure Code should be exercised only in particular instances of error, and in the particular manner given in the succeeding clauses which are merely intended to show the particular course which may be taken in those particular instances of error. It also held, that it was not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge had not been brought before him.

The High Court has the power to order not only the accused to be tried, but also that he be committed for trial.—*Prosunna Coomar Ghose*, 19 W. R. Cr. 56; see also *Lukhy Narain Nagory*, 24 W. R. Cr. 24: *Emp.* v. *Abdul Rahiman*, I. L. R. 16 Bom. 580. It has power also to annul what is illegal while passing a legal sentence,—*e.g.*, to set aside so much of a sentence which imposes a daily fine in addition to a subtantive fine.—*Kristodhone Dutt* v. *The Chairman of the Municipal Corporation of Calcutta*, 25 W. R. Cr. 6.

A Divisional Bench of the High Court has no power under this section to review its judgment pronounced in a criminal case.—*Emp.* v. *Fox*, I. L. R. 10 Bom. (F. B.) 176: *Emp* v. *Durga Charn*, I. L. R. 7 All. 672. See *In re Abdul Sobhan*, I. L. R. 8 Cal. 63.

Under the old Code it was held that, in considering whether a person has been improperly discharged by a Magistrate, the High Court was not restricted to an error of law only, but might order a trial where *primâ facie* the evidence established a case against the accused as to which he should be required to enter on his defence.—*In re Troylokhyanath Mitter*, 1 C. L. R. 83, where *In re Mohesh Mistree*, I. L. R. 1 Cal. 282, was dissented from on the ground that it was beyond the power of the Court to make the order made therein. See *Lachman* v. *Juala*, I. L. R. 5 All. 161.

Where a prisoner was charged with giving false evidence in a judicial proceeding, and being found guilty under s. 193 of the Indian Penal Code was sentenced to pay a fine of Rs. 100, or in default to be imprisoned, the High Court annulled the sentence under s. 297, cl. 6, of the former Criminal Procedure Code (X of 1872) on the ground that it was imperative in such a case that *some* term of imprisonment should be awarded.—*Emp.* v. *Khodai Singh*, 3 C. L. R. 527.

A sentence, where there are a number of prisoners, must impose a specific fine on each prisoner The High Court of Madras annulled a sentence imposing a fine of Rs. 300 on the prisoners individually and collectively.—*Pro.*, 11*th November* 1869, 5 *Mad. H. C. R. Appx.* v.

When a prisoner is convicted by a subordinate tribunal of an offence within its jurisdiction, but the evidence discloses an offence of a graver character beyond the jurisdiction of that tribunal, the High Court may quash the conviction and sentence for the minor offence, and direct a trial before a tribunal having jurisdiction over the greater. Whether it would do so or not, is a question not of law but of expediency upon the facts of a particular case.—*Mad. H. C. Pro.*, 1st *May*, 1872; *Weir* p. 35.

Consent of Accused.—A prisoner on his trial can, it has been said, consent to nothing.—*Emp.* v. *Murarji Gokuldas*, I. L. R. 13 Bom. p. 391: *Attorney-general* v. *Bertrand*, 31 L. J. P. C. 51, at p. 57.

Criminal proceedings are bad unless they are conducted in the manner prescribed by law, and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused.—*Queen* v. *Bholunath Sein*, I. L. R. 2 Cal. 23: (S. C.) 25 W. R. Cr. 57. See s. 537, *infra*.

The High Court may interfere with a conviction notwithstanding that the sentence has expired.—*Emp.* v. *Sinha*, I. L. R. 7 All. 135. In many cases a man's *status* is altered by a conviction (as in convictions under Chaps. XII and XVII of the Penal Code), and his prospect of future employment may depend upon the existence or annulment of the conviction.

The High Court has no power, either by way of appeal or revision, to interfere with a sentence passed by the Superintendent of the Tributary Mehals when exercising jurisdiction over offences committed in Mohurbunj, a place not situated within the limits of British India.—*Emp.* v. *Hurro Kole*, I. L. R. 9 Cal. 288: see *Emp.* v. *Keshub Mahajun*, I. L. R. 8 Cal. 985: *Hursu Mahapatro* v. *Dinabundhu Patro*, I. L. R. 7 Cal. 523.

Where a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter.—*In re Hurro Soondery Chowdhrain*, I. L. R. 4 Cal. 20: (S. C.) 3 C. L. R. 93.

It has been held that it is the duty of lower Courts, where there is a conflict between different High Courts, to follow the concurrent decisions of the Court to which they are subordinate, and that they are not at liberty to adopt a contrary opinion expressed by another High Court.—*Korban Ally Mirdha* v. *Sharoda Proshad Ailch*, I. L. R. 10 Cal. 82.

Interlocutory Orders.- The revisional powers under the section do not apply to interlocutory orders, by which no penalty is imposed on the accused, while the trial is still pending.—*Azim Khan* v. *Emp.*, Punj. Rec., 1885, p. 103.

Under this section the High Court has power to alter or reverse an order whether made under s. 195 or 470 of the Code directing a prosecution.—*In re Khepu Nath Sikdar*, I. L. R. 16 Cal. 730 *Chaudhuri Mahomed*, I. L. R. 20 Cal. 349, or, where an order which might have been made under s. 146 has improperly been made by the lower Court under s. 145, to make the order which the lower Court ought to have made.- *Reid* v. *Richardson*, I. L. R. 14 Cal. 561.

Section 439, read with ss. 435 and 423 (*c*), *supra*, enables the Court to reverse an illegal order on an application under s. 135, *supra*.—*Ram Kala* v. *Ganda*, Punj. Rec., 1885, p. 89.

So under the powers conferred by s. 439, and by s. 15 of the Charter Act the High Court may set aside an order made without jurisdiction.—*Ananda Chundra Bhuttacharjee* v. *Stephen*, I. L. R. 19 Cal. 127.

When the High Court either (1) sentences on appeal a person who has been acquitted by a subordinate Court, or (2) passes in revision a sentence involving re-imprisonment on a person who has already completed the term of imprisonment awarded by a subordinate Court; if the accused person appears, the High Court will immediately, upon passing sentence of imprisonment, order the arrest of the convict, and a warrant will be issued in the usual form to the keeper of the common jail in Bombay, or to the officer in charge of some district jail (generally that of Thana); and immediate orders will thereupon be issued to the Sheriff for the conveyance of the convict to the place of imprisonment; if the accused person does not appear, the High Court's sentence or order will be sent to the Court by which the trial was had, and it will thereupon be the duty of such Court to carry into effect the sentence or order of the High Court in the same manner as if such sentence or order had been passed by itself.—*Bombay Gazette, 7th May*, 1881.

The following rules under Act X of 1872 to provide for the due certifying and execution of orders of imprisonment in criminal cases are in force in Bombay :—

1. When a sentence on a prisoner is reversed or modified on appeal, a fresh warrant will be issued by the Appellate Court to the officer in charge of the jail for execution, and its order will be communicated to the lower Court for record.

2. When an appeal is rejected or a sentence confirmed, an intimation to that effect will be sent to the officer in charge of the jail by the Appellate Court, and its order will be communicated to the lower Court for record.

3. When a case is revised by the High Court, the Court or Magistrate to which the High Court certifies its order under s. 280 (442) of the Code of Criminal Procedure will proceed under that section to issue a fresh warrant or order to the jailor.

4. When a prisoner has applied to the High Court in revision to have the sentence passed on him revised, and the High Court rejects the application, intimation to that effect will be made direct to the Superintendent of the Jail.

5. In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which will then issue warrants (*vide* Forms 46 and 47, page 290, High Court Circular Order Book) to the officer in charge of the jail, as provided in s. 301 (381) of the Code of Criminal Procedure.

6. In all cases in which a sentence or order is modified or reversed, whether on appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been so modified or reversed. In revision cases, the Court to which the order is certified will issue the warrants as provided in para. 3.

7. In all cases the Superintendent of the Jail will acknowledge by letter the receipt of any warrant or order or intimation, and will inform the prisoner of the result of his appeal or application and report the fact in the letter.

8. In all cases in which a fresh warrant has been issued, whether in appeal or revision, the warrant should be returned to the Court issuing it when it has been fully executed.—*Bom. H. C. Cir.*, (2, *Gazette*, 1874, p. 557.

When the High Court calls on a Magistrate for the record of a case, which record has already been sent to the Sessions Court in appeal, the Magistrate should make a return accordingly to the writ.

When a case is called for at the same time both in appeal and by the High Court in revision, the Magistrate should comply with the order of the Court of Appeal and make a return accordingly to the writ of the High Court.—*Bom. H. C. Cir.*, 46a.

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

Under the preceding section no order can be made to the prejudice of the accused, unless he has had an opportunity of being heard, either personally or by pleader, in his own defence. See *Reg.* v. *Devama*, I. L. R. 1 Bom. 64. Under s. 436, the accused is entitled to an opportunity of showing cause before an order can be made against him under this section. See *In re Nobin Kristo Mookerjee*, I. L. R. 10 Cal. 268.

Under s. 340, every person accused before any Criminal Court may of right be defended by a pleader. See notes to that section.

Under the former Code a private prosecutor was not allowed to appear on a reference to the High Court. See *Queen* v. *Ramjai Mazumdar*, 6 B. L. R. Apx. 46 : *In the matter of Chandi Charan Chatterjee* v. *Chundra Kumar Ghose*, 5 B. L. R. Apx. 70.

In the case of *Thandavan* v. *Perianna*, I. L. R. 14 Mad. 363, the Madras High Court in exercise of its discretionary power under this section declined to hear counsel who appeared in support of a petition to revise an order of acquittal.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue ; and the Court shall consider such statement before overruling or setting aside the said decision or order.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this Chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified ; and, if necessary, the record shall be amended in accordance therewith.

Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.—*S.* 425, *supra.*

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Upper Burma :—In Upper Burma, except in the Shan States, Sched. (XVII) of Reg. V of 1892 provides that nothing in the schedule thereto with respect to procedure in inquiries or trials, or with respect to sentences or appeals therefrom or the enhancement or execution thereof, shall be construed to affect the Code in its application to European British subjects.

Magistrates who may inquire into and try charges against European British subjects.

443. No Magistrate, unless he is a Justice of the Peace, and [except in the case of *a District Magistrate or* [Act III of 1884, s. 3] Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

For the definition of 'European British subject,' see s. 4 (u).

The provisions of this Chapter relating to the kind of Court which shall have jurisdiction to inquire into a complaint and try a charge against an European British subject are not so much words taking away jurisdiction entirely as words which confer on the British subject a right to be tried by a certain class of Magistrates or Judges and by no other (see *In the matter of Quiros*, I. L. R. 6 Cal. 83 : (S. C.) 6 C. L. R. 463), which right the Code enables him to give up. See s. 454, *infra.*

Section 111 provides that ss. 109 and 110, *supra* (as to security for good behaviour), shall not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Nothing in this section applies to proceedings against European British subjects under s. 480, *infra.* In other respects the provisions of this Code, except as provided by this Chapter, apply to European British subjects.—*S.* 463, *infra.*

To make out a plea to the jurisdiction of a Mofussil Court on the ground that the accused is a European British subject, it is necessary to prove not only legitimate descent but also nationality. Hearsay is not admissible to prove nationality.—*Mad. H. C. Pro.*, 6 Mad. H. C. R. 7 ; *Weir*, p. 20.

The following opinion of the Officiating Advocate-General has been circulated by the Bengal Government for the information and guidance of Magistrates in Bengal :—

'I have come to the conclusion with considerable hesitation, that the words "inquire into or try any charge" in s. 443 of the Criminal Procedure Code, 1882, do apply to proceedings under s. 107. I think it is impossible for any one to give a confident opinion on the point, when it is a question arising upon language so obscure. No doubt the word "charge" is quite wide enough to include, and would, I think, ordinarily mean anything which could be made the subject of a charge so as to expose a person to the penalties or punishments provided by the Code, whether that charge was an act of omission or of an intention to commit an act, provided each was punishable. The difficulty arises when we come to s. 445, which appears to be intended to restore the jurisdiction taken away by s. 443 under certain restrictions, but employs different language, speaking only of an offence. It seems absurd that the jurisdiction should be restored when an offence is in question and withheld when an intention to offend is alleged. The terms used in s. 445 would therefore seem, on considering the scope of the Code, to be intended to cover the same ground as those used in s. 443. The question then arises, is the wider meaning to be given to "offence" or the narrow meaning to "charge"? No doubt "offence" is defined, while "charge" is not, but the definition allows the real meaning to be gathered from the context. I can see no reason why, when a European is charged with an intention of committing an offence, when his mind has to be dived into and its inclination inferred from acts generally of a doubtful character, the Legislature should have entrusted the inquiry to a class of officers less qualified to judge of such intentions, while prohibiting that class from judging with regard to accomplished facts. I should therefore conclude that "offence" in s. 445 is intended to correspond with "charge" in s. 443, and means any matter laid to the charge of a person which, upon conviction, renders him punishable. The matter dealt with in s. 107 is, I think, one for which a punishment is provided. In the first place, I think it must be considered a punishment to have to find security; and if security is not forthcoming, the defaulter is to be committed to prison. In the second place, the committal to prison is itself a punishment for the original offence of harbouring an unlawful intent, and is not merely a punishment for default in furnishing security when ordered by a competent authority so to do. It is really on the same footing as a fine with imprisonment in default of payment. I therefore think that the matter is one for which punishment is provided, although such punishment is only preventive in its object.

'It is also to be borne in mind that the only process to compel appearance and the only inquiry or trial are with respect to the necessity for requiring security; and that, if that matter is not beyond the jurisdiction of a Native Magistrate, the subsequent imprisonment, which follows without further trial, is within his competence; so that the Native Magistrate could imprison a European for a year under s. 123; while under s. 446 he could not sentence him for an accomplished crime to more than three months' imprisonment; the imprisonment under s. 446 being the direct punishment, while under s. 123 it is the virtual punishment, although not a sentence of the Court. I think that such a result as this was not intended, and therefore I am of opinion that a Native Magistrate cannot inquire into or try cases under s. 107.

'(Sd.) A. PHILLIPS.'

Sessions Judge to be an European British subject

Assistant Sessions Judge to have held office for three years and to be specially empowered.

444. No Judge presiding in a Court of Session *except the Sessions Judge* (Act III of 1884, s. 4) shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Cognisance of offence committed by European British subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person :

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

The Magistrates who are ordinarily competent to take cognizance of offences are Presidency Magistrates, District Magistrates, Subdivisional Magistrates, and any other Magistrate specially empowered by the District Magistrate or Local Government in that behalf. See s. 191, *supra*, and s. 480, *infra*.

Sentences which may be passed by Provincial Magistrates.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a *District Magistrate or* [Act III of 1884, s. 5] Presidency Magistrate shall pass any sentence on an European British subject other than

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imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both.

"And a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both." [Act III of 1884, s. 5.]

Sections 32 and 34 deal with the sentences which Magistrates may pass. The former section gives a Magistrate power to pass the following sentences,—*viz.* imprisonment for a term not exceeding two years including such solitary confinement as is authorized by law; fine not exceeding one thousand rupees and whipping. That power is now curtailed in the case of European British subjects. See *Emp.* v. *Berril*, I. L. R. 4 All. 141.

A Magistrate is not bound to ask an accused person categorically whether he claims his rights as a European British subject, nor to explain his rights to him as such.—*Tobin* v. *Emp.*, Punj. Rec., 1885, p. 11. See s. 454, *post*.

When commitment is to be to Court of Session and when to High Court.

447 When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

'High Court' means, in reference to proceedings against European British subjects or persons charged jointly with European British subjects (s. 214, *supra*), the High Courts of Judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab, and the Recorder of Rangoon.—*Section* 4 (*i*), *supra*. Section 185, *supra*, also provides that in British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court. As to Upper Burma, see Reg. VII of 1886 and Act XI of 1889, ss. 46, 48 and 66.

Where a person outside the Presidency-towns is accused of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds there are grounds for committing the accused for trial, the commitment must be to the High Court and not the Court of Session.—*Section* 214, *supra*.

Instructions as to European British Subjects committed to the High Court.—(*a*) Magistrates making commitments to the High Court in its original criminal jurisdiction should promptly send the records of cases to the Clerk of the Crown, and not delay doing so until the commencement of the Sessions at which the cases are to be tried. The practice of so delaying causes great inconvenience to all concerned, and deprives the Judge generally of the opportunity, which he ought to have, of looking over the depositions of the witnesses before the case goes to trial.

(*b*) A copy of the warrant of commitment should always form part of the record sent to the Clerk of the Crown.

(*c*) All witnesses should be bound, in the usual form, to attend at the Court-house on a day specified, which should be the *first day of the Sessions* for which the prisoner is committed; and this should be the next Sessions after the commitment, if there is a sufficient interval of time between the commitment and the next Sessions; and if not, then the next following Sessions. Much inconvenience is often occasioned by and to witnesses from the Mofussil in consequence of their want of information as to the means of getting quarters, if they are poor and strangers, and as to the means of obtaining their expenses. They should be informed that the Commissioner of the Police of Calcutta (and not the Clerk of the Crown) has charge of these matters.

(*d*) In cases where Magistrates require advice or direction (except as to what merely concerns the office of Clerk of the Crown), they should apply direct to the Solicitor to Government.—*Cal. H. C. C. O., No.* 5 *of 6th May* 1864: *Wilkins*, pp. 125, 126.

Warrants to be sent with European British Subjects committed to the High Court.—(*a*) The warrant of commitment in the following form should be directed to the Superintendent of the Presidency Jail in Calcutta:—

To the Superintendent of the Presidency Jail.

Whereas.....of.....is (*or* are) charged with (*state offence*) and has (*or* have) been committed to take his (*or* their) trial before the High Court:

You are hereby required to receive the said .....into your custody and to have the body (*or* bodies) of the said..... before the said High Court for trial at the Sessions of the Court next ensuing the date hereof.

Dated the..... 18 .....

.....(*Signature.*)

.....(*Office and powers.*)

(*b*) The warrant of commitment ought always to be delivered to the officer in whose custody the prisoner is sent, in order that it may be made over with the prisoner to the Superintendent of the Presidency Jail as his authority to receive and detain the prisoner. Failure of justice has been caused in many cases through neglect to adopt this course, and the Court trust that Magistrates will be careful as well in this respect as in taking proper steps to ensure the attendance of the necessary witnesses at the Sessions. In addition to the warrant of commitment, a warrant should be directed to the Police-officer in charge of the prisoner, and should direct such officer to take the prisoner and deliver him to the Superintendent of the Presidency Jail. Such warrant may be in the following form :—

FORM OF WARRANT.

To (*the name of the officer or officers sent in charge of the prisoner*) and to all other Peace officers of the Empress of India in the Provinces and Districts of Bengal, Behar, and Orissa, and places subordinate thereto, whom this may concern.

WHEREAS ..... of .....
is charged with (*state the offence as in warrant of commitment*), and has been committed by me, the undersigned Magistrate, to the Superintendent of the Presidency Jail for trial before the High Court of Judicature at Fort William in Bengal, you are therefore hereby required to receive the said ..... into your custody, and to deliver him into the custody of the Superintendent of the Presidency Jail at Calcutta, to be there safely kept until he shall be thence delivered by due course of law.

Dated the.....day of.....

—*Calc. H. C. C. O., No.* 8 *of 5th August* 1866 ; *Wilkins*. pp. 126, 127.

The following rules are in force in the Punjab :—

"Any Magistrate or Justice of the Peace committing a European British subject for trial before the Chief Court of the Punjab shall, in conformity with ss. 20 and 27 of Act IV of 1866, direct a warrant to some jailor or other officer having authority to receive and keep prisoners, and the same shall be in the form (C) given in the second Schedule to the Code of Criminal Procedure, and referred to in s. 303 (384) thereof.

2. "Whenever the Chief Court shall have given notice of its intention to hold sittings at any place, whether at the seat of Government of the Punjab, or elsewhere, in the exercise of the original criminal jurisdiction, the Deputy Commissioner of the District, within which such place may be situate, shall cause to be brought before the Chief Court at its sittings all such accused persons as may be in the custody of the jailor or other officer having authority in such district to receive and keep prisoners committed for trial before the Chief Court, unless the Court in any particular case shall otherwise order.

3. "When the accused person is brought before the Court, according to the requirements of s. 237 (271) of the Code of Criminal Procedure, he shall remain, until after the trial, in the custody of such person as the Deputy Commissioner of the District may appoint for his custody.

4. "Every person committed for trial before the Chief Court, who shall be delivered by the jailor or other officer having authority to receive and keep prisoners to the Deputy Commissioner of the district for the purpose of being brought before the Chief Court, in conformity with the said s. 237 (271) of the Code of Criminal Procedure, shall be deemed to have been delivered from jail in due course of law.

5. "All persons committed or bailed for trial at any time other than during the sittings of the Court shall be tried at the sittings held next after the date of the delivery of the charge to the Registrar, unless the Court shall otherwise order ; and all persons committed or bailed during any sittings of the Court shall be tried at such sittings unless the Court shall otherwise order.

6. "As soon as notice shall have been given by the Chief Court of the place of trial of any European British subject committed for trial before it, the committing officer shall send intimation to the officer in charge of the jail, to which the accused is to be committed for intermediate custody, of the probable time of arrival of the accused. Notice should at the same time be sent the Deputy Commissioner of the District within which the place of trial may be situate.

7. "At all trials before the Chief Court some proof must be forthcoming that the accused is a European British subject and amenable to the jurisdiction of the Court. For this purpose the committing Magistrate should forward some evidence in proof of the status of the accused, unless the accused has made a statement before the Magistrate to the effect that he is a European British subject. The fullest proof is not required as if the question were in issue."—*Smyth*, p. 100.

The following rules regarding the commitment of Europeans and others to the High Court Sessions were published in Bombay :—

1. It shall be the duty of committing Magistrates, at the time of commitment, to take recognizances from prosecutors and witnesses for the prosecution whose attendance may be necessary at the trial, binding them to be present at the High Court on the first day of the particular Sessions to which the case is committed.

2. The Sessions will commence on the following dates :—
   1*st*.—The 2nd of February,
   2*nd*.—The 10th of April,
   3*rd*.—The 27th of June,
   4*th*.—The 10th of September,
   5*th*.—The 20th of November,

unless any such date shall fall on Sunday, when the Sessions will begin on the following Monday.

3. Witnesses for the defence shall, under s. 358 (216) of the Code of Criminal Procedure, be summoned by the Magistrate to attend at the High Court on the first day of the Sessions to which the accused is committed.

4. It shall further be the duty of the Magistrate to forward to the Clerk of the Crown, with the record of his proceedings, a list of the witnesses for the prosecution from whom recognizances

have been taken, and also of the witnesses for the defence to whom summonses have been issued, with a note of the date on which such witnesses have been required to be in attendance at the High Court.

5. Should the Magistrate in his discretion consent to summon other witnesses on behalf of the accused at any time subsequent to the commitment, he shall transmit to the Clerk of the Crown a supplemental list without delay.

6. It shall further be the duty of the Magistrate, upon receiving from the Clerk of the Crown a letter stating the day on which the Criminal Sessions are to be held and requesting him to cause the witnesses to be served with notices to attend on the day named, to cause the witnesses to be served with such notices in sufficient time to ensure their attendance on that day, and to take any other proceedings that may be necessary for the purpose.

7. When an accused person is sent to Bombay in custody to await his trial at the Criminal Sessions of the High Court, the warrant for his detention shall be addressed to the Superintendent of the House of Correction.—*Bombay Gazette*, 1879, pp. 471, 475.

As to the trial of European British subjects in Travancore and Cochin, see *Gazette of India*, 1875, p 404.

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Sentences which may be passed by Court of Session

449. Notwithstanding anything contained in section 31, no Court of Sessions shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Procedure when Sessions Judge finds his powers inadequate.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Compare s. 76 of Act X of 1872.

The second paragraph of that section empowered the Court to transfer the case at any stage of the proceedings. Now the transfer must be after commitment and before signing judgment.

As to the procedure to be adopted when a commitment to the High Court is made under this section, see ss. 217 and 218, *supra*.

Procedure when Sessions Judge is not an European British subject.

450. *If the Judge of the Sessions Division within which the offence is ordinarily triable is not an European British subject, the case shall be reported by the committing Magistrate for the orders of the highest Court of criminal appeal for the province within which such division is situate.*

In British Burma the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the highest Court of Criminal Appeal.

This section has been repealed by Act III of 1884, s. 6.

Jury or assessors before High Court or Court of Session

451. "(1) In trials of European British subjects before a High Court or Court of Session, if before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans.

"(2) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly,

may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans."

[Act III of 1884, s. 7.]
See s. 269 as amended by Act X of 18-6, s. 9, *supra*, and s. 460, *post*.

As to the number of persons of which a jury may consist, see note to s. 274, *supra*.

In the case of the trial of a person not being a European or American, a majority of the jury, if he so desires it, shall consist of persons who are neither Europeans nor Americans.—*Section 275, supra.*

451A. "(1) In trials of European British subjects before a District Magistrate, any such subject may, in a summons-case before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

Right of European British subject to claim jury before District Magistrate.

"(2) If a claim is made under sub-section (1) in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

"(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

"(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

"(5) The provisions of sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

"(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

"(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

"(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447."

[Act III of 1884, s. 8.]
The effect of the sixth clause of this section is to confer upon the District Magistrate precisely the same authority as the Sessions Judge has under s. 307 of the Code to submit to the High Court a case in which he disagrees with the verdict of a jury so completely that he considers a reference necessary. The expression "trial by jury" does not only refer to proceedings up to the time when the jury pronounce their verdict but refers generally to cases triable with a jury as contradistinguished from cases tried with the aid of assessors or in any other manner mentioned in the Code.—*Emp. v. McCarthy*, I. L. R. 9 All. 420.

451B. "If an accused person claims to be tried by jury under section 451A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself

Transfer to another Court in certain cases.

under section 451A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

"(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451A."

[Act III of 1884, s. 8.]

Trial of European British subject and Native jointly accused.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

When Native may claim separate trial.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

This section corresponds with ss. 30 and 37 of Act X of 1875, except that it applies not only to High Courts, but also to Courts of Session.

It has been held, that a prisoner not being an European British subject, who is not charged jointly with an European British subject, is not entitled to be tried by a jury of which at least five persons shall not be Europeans or Americans.—*Reg.* v. *Lalubhai Gopaldass*, I. L. R. 1 Bom. 232.

A person not being a European British subject, who is tried before a District Magistrate with a European British subject, cannot claim the right of appeal to the High Court under this section, which is exclusively reserved to such European British subject.—*In re Solomon*, I. L. R. 14 Bom. 100. See s. 461, *infra*.

Procedure on claim of person to be dealt with as European British subject.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

There appears to be no appeal from an order deciding that an accused person is not an European British subject, apart from its being a ground of appeal from a conviction after such order has been made.

An accused person ought to have an opportunity afforded of pleading that he is an European British subject. A mere statement made by a prisoner after the trial has been completed cannot be acted upon.—*Clark* v. *Bunne*, 5 W. R. Cr. 53. The section does not impose any duty upon a Magistrate to ask an accused person categorically if he is a European British subject.—*Tobin* v. *Emp.*, Punj. Rec., 1885, p. 11. See next section.

When an accused claims to be dealt with as a European British subject, the Magistrate must decide that point before going into the case.—*Emp.* v. *Berrill*, I. L. R. 4 All. 141.

Failure to plead status a waiver.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Compare s. 84 of Act X of 1872.

The provision that if, when a claim has been made before and disallowed by the committing Magistrate, it is not again made before the Court to which the accused has been committed, the accused shall be deemed to have relinquished his right, is new.

Where a European British subject waives his right to be dealt with as such by the Magistrate before whom he is tried, he thereby loses all the benefits of the special procedure provided for him under Chapter XXXIII of the Code.—*Emp.* v. *Grant*, I. L. R. 12 Bom. 561.

Before an European British subject, it has been held, can be considered to have waived his privilege conferred upon him by this Chapter, it must appear that his rights have been distinctly made known to him, and that he has been enabled to exercise his choice and judgment whether he would or would not claim such right.—*In re Quiros*, I. L. R. 6 Cal. 83 : (S. C.) 6 C. L. R. 463. See *In re Foy*, Tay. and Bell, 226 : *Reg* v. *Bholanath Sen*, I. L. R. 2 Cal. 23. This waiver of privilege under this section must be an absolute giving up all rights with reference to this Chapter which a European British subject has, and the words 'dealt with as such before the Magistrate' mean everything contained in the Chapter—that is to say, the tribunal having cognizance of the case, the procedure, and also the punishment to which the accused would be liable.—*In the matter of Quiros*, I. L. R. 6 Cal. 83: (S. C.) 6 C. L. R. 463, *per* JACKSON, J. There, Quiros and others, who were all European British subjects, were charged, with rioting and violence, before the Assistant Magistrate vested with the powers of a Magistrate of the second class only. The offences being triable under s. 72 of Act X of 1872 only by a Magistrate of the first class, who was also a Justice of the Peace, the accused were asked if they had any objection to being tried by the Assistant Magistrate. Each of the accused said he had no objection, and the trial accordingly proceeded, and all were found guilty and convicted. The High Court quashed the convictions. JACKSON, J., said :—"In the case before us, for anything that appears to the contrary, the question put to the accused may simply have been whether they had any personal objection to Mr. Caspers as Magistrate to try them. The answer naturally would be, 'We have no objection to be tried by Mr. Caspers.' But if the question had been, 'You stand here as European British subjects which I know you to be, and as such British subjects you have the right to claim that you should not be tried, except by Magistrates of the first class, to which class I do not belong. Do you claim that right or not?'—the answers might have been quite different."

The following circular has been published by the Bombay High Court :—

If the Magistrate know that the prisoner is a European British subject, it is his duty, whether the prisoner claims exemption or not, to abstain from further proceedings against him as a Magistrate. If without any actual knowledge on the subject, the Magistrate have reason to suppose that the prisoner is such a British subject, it is the Magistrate's duty to ascertain from him whether he alleges or denies that he is one ; and if he alleges that he is, to give him every facility, by allowing him, and otherwise, time for proving that he is, the burden of such proof being on him. A Magistrate will not be justified, if he has reason to suppose that a prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the Magistrate will be quite warranted in proceeding against him. If he do so plead and give proof, or produce documents which, although not amounting to full legal proof of his status, satisfy the Court that he is really a European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a Justice of the Peace, and send it up to the High Court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent.—*Bom. H. C. Cir.* 39.

The Magistrate ought to inquire whether he has jurisdiction or not, if there is any doubt on the point, for if he has no jurisdiction, and has the knowledge or means of knowledge of his want of jurisdiction, he is liable as a trespasser, if he acts.—*In re Foy*, Tay. and Bell, 219. See s. 534, *infra*. See also *Tobin* v. *Emp.*, Punj. Rec., 1885, p. 11.

Trial under this Chapter of person not an European British subject.

455. Where a person who is not an European British subject is dealt with as such under this Chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

This section only applies in the case of unlawful detention of European British subjects. See *Queen* v. *Gholam Ismail*, I. L. R. 1. All. (F. B.) 1. In that case certain natives of India had been tried and acquitted, but an appeal having been preferred against the judgment of acquittal to the High Court, they were arrested by the Police, who brought them before the Magistrate, and the Magistrate illegally directed that they should be detained in custody, pending the decision of the appeal. A majority of the High Court at Allahabad held, that the High Court had no power as a Court of Revision to interfere with the order, on the ground that it was not a judicial proceeding. TURNER, Offg. C. J., said :—"To European British subjects, and to such persons only, the 81st section (of Act X of 1872) accords the privilege, if they are detained in custody, and consider their detention illegal, of applying to the High Court."

Within the limits of the ordinary original civil jurisdiction of the High Court, any person, whether an European British subject or not, if illegally or improperly detained in public or private custody within such limits, may be set at liberty by the High Court.—*S.* 491, *infra*.

[1] Section 8 of Act XXI of 1879 (Foreign Jurisdiction and Extradition Act) provides that the law for the time being in British India relating to offences and to criminal procedure shall extend to all British subjects, whether European or Native, in the dominions of Princes and States in alliance with Her Majesty. This Code, as amended by Act III of 1884, is thus by virtue of that section extended to all such British subjects.—*Emp.* v. *Edwards*, I. L. R. 9 Bom. 333. See *Emp.* v. *Morton*, I. L. R 9 Bom. (F. B.) 288, and s. 458, *infra*.

Procedure on such application.

457. The High Court, if it thinks fit, may, before issuing such order inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application ; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Territories throughout which High Court may issue such orders.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor-General in Council may direct.

The following Notification, dated 23rd September 1874, No. 1203, has been issued by the Home Department : In exercise of the powers conferred by the 28th Victoria, cap. 15, *s.* 3, the Governor-General in Council is pleased to make the following orders :—

I.—Original and appellate criminal jurisdiction shall be hereafter exercised over European British subjects of Her Majesty by the several High Courts established at Madras and Bombay and in the North-Western Provinces of India, respectively, as below provided :

By the High Court at Madras in—
Coorg.
Upper Godaveri District of Central Provinces.

By the High Court at Bombay in—
The Nagpur and Narbada Divisions of the Central Provinces.
The Chhattisgarh Division of the Central Provinces.
The Pargana of Manpur in Central India.

By the High Court of the North-Western Provinces in—
Oudh.
The Jabalpur Division of the Central Provinces.
The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto other than the station at Satna.
Morar Cantonment, Ajmere, and British Mairwara.

II.—The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, shall be deemed to be part of the District of Allahabad for the purpose of trial by the Court of Sessions at Allahabad of offences cognizable by a Court of Session, and alleged to have been committed on the said line of Railway lands and buildings.

This notification cancels the notifications numbered and dated respectively as follows :

Home Department, No. 221, dated 10th January 1867.
" " No. 4919, dated 27th October 1869.
" (Judicial), No. 880, dated 31st May 1871.

—*Gazette of India*, 1874, p. 484.

The following additional Notification, dated 23rd September 1874, No. 178J, has been issued by the Foreign Department : With reference to Notification, No. 1203 of this date, in the Home Department, the Governor-General in Council is pleased, in the exercise of the powers conferred by the 28th Victoria, cap. 15, s. 3, to make the following orders :

Original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native states, territories, and chiefships below named, shall, until the Governor-General in Council otherwise orders, be exercised by the High Courts of Judicature established at Fort William, Madras, Bombay, and in the North-Western Provinces, respectively, as follows :

I.—By the High Court at Fort William in—

Manipur.
Kuch Bihar.
The States in the Khasia Hills.
The Katak Tributary Mahals.
The Tributary Mahals of Chutia Nagpur.
Sikkim.
Bhutan.
Hill Tipperah.
Nepal.
The Territories of Chiefs or Tribes adjoining the Bengal Frontier.

II.—By the High Court at Madras in—

Mysore.
Travancore.
Cochin.
Pudukottai.
Banganapalle.
Sandur.

III.—By the High Court at Bombay in—

The Haidarabad Assigned Districts.
Haidarabad excepting the Assigned Districts.
Ali Morad's Territory in Upper Sindh.
Kolhapur.
Sawunt Wari.
The Southern Mahratta State.
The Satara Jagirs.
Jingira.
Suchin.
Bandsa.
Dharmpur.
The States in the Rewa Kanta Agency.
Penth in the Ahmadnagar Collectorate.
The Territories of Chiefs or Tribes adjoining the Sindh Frontier.
Bhopal.
Barwani.
Dewas.
Dhar.
Indore excepting the District of Alampur in Bundelkund.
Jobat.
Burwai.
Kattiwara.
Jawar.
Cambay.
The Gaikwar's Territories.
The States in Kathiawar.
Kach.
The States in the Pahlanpur Agency.
The States in the Mahi Kanta Agency.
Jaura.
Kilchipur.
Narsinghar.
Rajghar.
Ratlam.
Sitamau.
Sillana.
Gwalior, Districts of.
Muhammadgarh.
Matwara.
Rattan Mol.
Ali Rajpur.
Jhabua.
Tonk, Districts of.
Pirawar.
Nimbhera.
Seronji.
Meywar.
Partabghar.
Marwar.
Dungapur.
Banswara.
Jhalawar.
Serdhi.
Jaisalmer.
Amjhira, Agar, Bag, Diktan, Mandisur, Nimuch, Ujein, Sagor, Shujawulpur, Sonkach — With the several parganas subordinate thereto, included in the charge of Sindia's Sir Subah of Malwa.
Bhilsa, Ganj Baroda, Malharghar, Maksudanghar — With the several parganas subordinate thereto, which form part of Sindia's Sir Subah of Esaugarh.
Jabra Patan, Districts of
Gangrar.
Pach Pahar.

III.—By the High Court at Bombay in—Continued.

Darg.
The Feudatory States in the Central Provinces, *viz.*
Kalnhandi or Karond.
Raigarh Bargarh.
Sarangarh.
Patna.
Sonepur.
Rairaldol.
Bamra.
Sakti.
Kawarda.
Khairagarh.
Nandgaon.
Kondka or Chhulkhadan.
Kanka.
Bastu.
Makrai.

IV.—By the High Court in the North-Western Provinces in—

Garwal.
Chirkhari.
Dholpur.
Bhurtpur.
Alwar.
Jeypur.
Koroli.
Tonk, with the exception of Pirawa, Nimbhera, and Seronji.
Kotah.
Bundi.
Kishengarh.
Bikanir.
Shapura.
Rampur.
Gwalior, the whole of the State, excepting the Sir Subahship of Malwa and the districts under the Sir Subaship of Esangarh enumerated above.
The Mairwara Perganas belonging to Meywar and Marwar.
Bandelkund States and Chiefships.
Adjeygarh.
Alipura.
Baoni.
Beronda.
Behat.
Behari.
Bhaisonda.
Bijawar.
Bijna.
Chatrapur.
Dhurwai.
Dhattiah.
Geranli.
Gaurihar.
Jigni.
Jasau.
Kamta Rigola.
Koti.
Kauniadhana.
Logasi.
Maihir.
Nagod.
Naingoan Rebai.
Urcha.
Pahari Banka.
Pahara Chanbe.
Paldeo.
Panna.
Rewah.
Sohawul.
Sampthar.
Surila.
Tiraon.
Tori Futtehpur.
Holkar's District of Alampur.

—*Gazette of India*, 1874, p. 485.

The following Notification, dated 23rd September 1874, No 179J., has been issued by the Foreign Department: In exercise of the powers vested in him by s. 6 of Act XI of 1872, the Governor-General in Council is pleased to direct that all Justices of the Peace within the States, Territories, and Chiefships specified in the preceding notification shall commit for trial to the High Courts, respectively having jurisdiction under the said notification, such European British subjects being Christians, as are required by Act X of 1872 to be committed to a High Court. — *Gazette of India*, 1874, p. 486.

The following additional notifications have been published :—

Foreign Department Notification, dated 23rd September 1874, No. 180J. In modification of Notifications, No. 2199G., dated 11th October 1872, and No. 300G., dated 14th February 1873, the Governor-General in Council is pleased to direct that the powers of a High Court within the lands described in the aforesaid notifications shall not be exercised by the Agent to the Governor-General in Rajputana in cases in which the accused are European British subjects, being Christians.—*Ibid.*

Foreign Department Notification, dated 23rd September 1874, No. 181J. In modification of Notification, No. 150J., dated 7th August 1873, the Governor-General in Council is pleased to direct that the powers of a High Court within the territories described in the aforesaid notification shall not be exercised by the Agent to the Governor-General in Central India in cases in which the accused are European British subjects, being Christians.—*Ibid.*

Foreign Department Notification, dated 18th December 1874, No. 215J. With reference to Notification, No. 178J., of the 23rd September 1874, the Governor-General in Council directs the addition of Savanur to the list of Native States, Territories and Chiefships in which the High Court at Bombay is authorized to exercise original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians.—*Gazette of India*, 1874, p. 612. See *Emp.* v. *Edwards*, I. L. R. 9 Bom. 333: *Emp.* v. *Morton*, I. L. R. 9 Bom. (F. B.) 288: *Ward* v. *Reg.*, I. L. R. 5 Mad. 33; and *In re Solomon*, I. L. R. 14 Bom. 160.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session, jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this Chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate *or any Judge presiding in a Court of Session* [Act III of 1884, s. 9], not being a Justice of the Peace.

Where an European British subject was convicted by a single Judge of the High Court for supplying liquor without a license, an act made punishable by Madras Act, No. I of 1806, by a Magistrate, on a reference to a Bench consisting of three Judges of the same Court, the conviction was set aside as beyond the jurisdiction of the High Court.—*Reg.* v. *Donoghue*, 5 Mad. H C. R. 277. In that case the learned Judges purposely abstained from expressing an opinion upon a question raised by the Crown Prosecutor as to the power of the Local Legislature to render European British subjects punishable by a Magistrate on summary conviction for an offence newly created by them.

In Madras, in a subsequent case it was held that a Magistrate, who was a Justice of the Peace, but not an European British subject, had no jurisdiction to try an European British subject for an offence punishable under a special law (*e.g.*, Act I of 1859, the Merchant Shipping Act, s. 83) notwithstanding that he might have jurisdiction under the special procedure prescribed in the special law.—*Mad. H. C. Pro.*, 18*th December* 1873; *Weir*, p. 20.

460. In every case triable by jury or with the aid of assessors in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

Jury for trial of Europeans or Americans.

Section 234 of Act X of 1872 provided that trials of Europeans (not being European British subjects) or Americans should be by jury. Under this section such trials may be either by jury or with the aid of assessors. See note to s. 451, *supra*.

See s. 288, *ante*, as to number of jurors fixed upon in the various Presidencies.

461. Whenever an European or American is charged before the Court of Sessions jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Jury when European or American charged jointly with one of another race.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, *or before the Court of a District Magistrate or Session Judge proceeding under s. 451A or 451B* [Act III of 1884, s. 10], the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

Summoning and empanelling jurors under section 451 or 460

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purposes of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

As to exemption of military officers in the Punjab, see note to s. 321, *ante*.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

Conduct of criminal proceedings against European British subjects, &c.

CHAPTER XXXIV.

LUNATICS.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

Procedure in case of accused being lunatic.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

This section, unlike the corresponding sections of the former Codes, applies specifically both to trials and inquiries.

If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; but in case of a Court other than a High Court, if such inquiry results in a commitment or a conviction, the proceedings must be forwarded with a report of the circumstances of the case to the High Court (s. 341, *supra*). See *Emp.* v. *Husen*, I. L. R. 5 Bom. 262, and notes to s. 341, *supra*.

When an accused person is found to be insane before the completion of his trial, the Judge should postpone the trial and report the case to the Lieutenant-Governor instead of trying the accused when he is incapable of making his defence, and acquitting him on the ground that he committed the offence charged when he was incapable of knowing that he was doing wrong.—*Reg.* v. *Noorkhan Chowdry*, 1 W. R. Cr. 11.

The test of insanity is, whether at the time of committing the offence the prisoner knew he was doing wrong.—*Reg.* v. *Jago Mohun Malo*, 24 W. R. Cr. 5. See *Emp.* v. *Venkatasami*, I. L. R. 12 Mad. 459: and *Emp.* v. *Lakshman Daydu*, I. L. R. 10 Bom. 512.

Act XXXVI of 1858 contains the following provisions as to wandering and dangerous lunatics:—

Section 4.—It shall be the duty of every Darogah or District Police-officer to apprehend and send to the Magistrate all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy. Whenever any such person as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a medical officer, shall examine such person; and if the medical officer shall sign a certificate in the form A to the schedule to this Act, and the Magistrate shall be satisfied on personal examination or other proof that such person is a lunatic and a proper person to be detained under care and treatment, he shall make an order for such lunatic to be received into the asylum established in the division in which the Magistrate's jurisdiction is situate, or if such lunatic is not a native of the country, or the circumstances of the case so require, into a lunatic asylum at the Presidency, and shall send the lunatic in suitable custody to the lunatic asylum mentioned in such order, provided that if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative: provided also, that if any such friend or relative shall desire that the lunatic shall be sent to a licensed asylum instead of the public asylum of the division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing and care of the lunatic in such asylum, the Magistrate may send the lunatic to the licensed asylum mentioned in the engagement.

Section 5.—If it shall appear to the Magistrate, on the report of a Police officer or the information of any other person, that any person, within the limits of his jurisdiction, deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic and summon such relative or other person as has or ought to have charge of him, and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly cared for and treated, and if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month.

If there be no person legally bound to maintain the supposed lunatic, or if the Magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and upon being satisfied in the manner aforesaid that the person deemed to be lunatic is a lunatic and a proper person to be detained under proper care and treatment, may make an order for his reception into such asylum as aforesaid. It shall be the duty of every Darogah or District Police-officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge.

Section 18.—The word 'lunatic' as used in this Act means and includes every person of unsound mind and every person being an idiot.

The power with reference to lunatics conferred on a Local Government by Chapter XXXI, ss. 426 and 430 of Act X of 1872, was extended to the Commissioner in Sind.—*Bombay Gazette*, 1872, p. 312.

The Police Surgeon at Bombay is the medical officer to examine persons accused of offences before the Presidency Magistrates, and who appear to them to be of unsound mind and incapable of making their defence.—*Bombay Gazette*, 1877, p. 339.

The officer in medical charge of the Madras Penitentiary is the medical officer by whom persons accused before a Presidency Magistrate of offences, and appearing to such Magistrate to be of unsound mind and incapable of making their defence, are to be examined. And the lunatic asylum at Madras is the place in which persons so accused, and found to be of unsound mind and incapable of making their defence, are to be kept in safe custody pending the orders of the Government, if the offences of which they are accused are non-bailable, or if sufficient bail is not given.—*Madras Gazette*, 1878, p. 474.

Whenever an accused person appears, upon the medical evidence, to be of unsound mind and incapable of making a defence, the Court should stay further proceedings in the case. It cannot proceed to acquit the accused.—*Mad. H. C. Pro., 4th September* 1876 ; *Weir*, p. 43.

Procedure in case of person committed before Court of Session or High Court being lunatic.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

This section corresponds with s. 425 of Act X of 1872 as amended by s. 30 of Act XI of 1874 and with s. 120 of Act X of 1875.

Those Acts provided that the Court should, in the first instance, try the fact of the soundness of mind or incapacity of the accused. This Act now provides that the jury or the Court with the aid of assessors shall, in the first instance, try the fact of the soundness or incapacity of the accused. This alteration is in accordance with the decision in the case of *Reg.* v. *Bheekoo Kalwar*, 10 B. L. R. Appx. 10.

In the case of *Reg.* v. *Doorjodhun Shamonto*, 19 W. R. Cr. 26, a Sessions Judge in his charge to the jury told them that in his judgment the accused was at the time of his trial exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time that he committed the offence. It was held, that the issue as to whether the accused was of unsound mind at the time of the trial and incapable of properly making his defence was a preliminary issue to that put by the Sessions Judge, and should have been first submitted to the jury.

Release of lunatic pending investigation or trial.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Under this section security may be taken for the appearance of the accused either before the Magistrate or Court, or before such officer as the Magistrate or Court may appoint in that behalf. The section is silent as to the place of custody of a lunatic, pending the orders of the Local Government in cases in which sufficient security is not given and in non-bailable cases.

As to removal to England of a criminal lunatic found to be such in India, see Stat. 14 and 15 Vict. cap. 81, ss. 1 and 2, and *In re Maltby*, L. R. 6 Q. B. D. 18.

The authority of the Criminal Court over an accused, declared under this section to be a lunatic, ceases on the lunatic being handed over to the Local Government, and it does not revive until the prisoner is sent back to the Magistrate under s. 473 on a certificate that he is capable of making his defence. See *Emp.* v. *Joy Hari Kor*, I. L. R. 2 Cal. 356. A Magistrate has no power to release the lunatic on taking security in a non-bailable case.—*Ibid.*

When a Magistrate has reported a case to the Local Government, he ought not to strike off the case (*Queen* v. *Rughooa*, 6 W. R. Cr. 3), so that the inquiry may be resumed under the next section.

In the Punjab, references regarding lunatics under this section and ss. 471 to 475 should be addressed to Government for orders through Commissioners. See *Smyth*, p. 134.

Compare the procedure under s. 341, *supra*.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

When the accused has been released under section 466 and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which if he had been of sound mind would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

When accused appears to have been insane.

Compare s. 424, paras. 1 and 2, of Act X of 1872, and s. 195 of Act IV of 1877. These sections of the repealed Acts applied only to cases exclusively triable by a Court of Session.

Whenever a Magistrate sends for trial before the Court of Session an accused person regarding whose sanity at the time of committing the offence he entertains any doubt, he must at the same time inform the jail authorities of the supposed state of the accused, in order that he may be placed under careful surveillance prior to his arraignment before the Court of Session.—*Bom. H. C. Cir.* 43, *Bombay Gazette*, 1879, pp. 471, 475.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specially whether he committed the act or not.

Judgment of acquittal on ground of lunacy.

Section 84 of the Penal Code provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. But the fact of unsoundness of mind is one which must be clearly and distinctly proved before the jury is justified in returning

a verdict under s. 84 of the Indian Penal Code. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved.—*Reg.* v. *Nubia Chunder Banerjee*, 20 W. R. Cr. 70. See s. 105 of the Evidence Act.

In the case of *Reg.* v. *Shaikh Mustafa*, 1 W. R. Cr. 1, where it appeared at the trial that the prisoner was not of sound mind, the High Court directed that he should be placed under the care of a Surgeon who should be directed to carefully watch his state of mind and to report the result of his observations to the Sessions Judge not less than thirty days after he had taken charge of the prisoner. See *Reg.* v. *Parsoram Doss*, 7 W. R. Cr. 42.

In *Macnaghten's* case, 10 Cl. and Fin., 200, the following questions were propounded to the Judges by the House of Lords :—

1st.—What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or person : as for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?

2nd.—What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for example) and insanity is set up as a defence?

3rd.—In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

4th.—If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?

5th.—Can a medical man conversant with the disease of insanity who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?

To these questions the following answers were given by the Judges (with the exception of Mr. Justice MAULE, who delivered a separate judgment) ;

To the first question.—"Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusion only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law ; by which expression we understand your Lordships to mean the law of the land.

To the second and third questions.—"As these two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jurors ought to be told in all cases that every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong : which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that everyone must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable ; and the usual course, therefore, has been to leave the question to the jury whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong : and this course we think is correct, accompanied with such observation and explanations as the circumstances of each particular case may require.

To the fourth question.—"To this question the answer must, of course, depend on the nature of the delusion ; but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune and he killed him in revenge for such supposed injury, he would be liable to punishment.

To the fifth question.—"In answer to this question we state to your Lordships, that we think the medical man, under the circumstances supposed, cannot, in strictness, be asked his opinion in the terms above stated, because each of those questions involved the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right.

The following rule is in force in Bengal —

It is necessary that the finding under s. 429 (470) of the Criminal Procedure Code should state specifically whether the accused committed the act charged or not, if he be acquitted on the ground that at the time at which he is charged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law. In some instances the Judges have found the prisoner *guilty* of the offence charged, and then acquitted him on the ground of insanity, thus including two opposite verdicts in one and the same finding, a contradiction arising from a want of attention to the words of the law.—*Cal H. C. C. O., No. 22 of 10th December*, 1864, *Wilkins*, p. 5.

In Bengal the following form of acquittal on the ground of insanity is followed :—

The Court, concurring with the assessors, finds that did kill , by striking him on the head with a club ; but that, by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is therefore not guilty of the offence specified in the charge, *viz.*, and the Court directs that the said be acquitted, and that, under the provisions of s. 430 (471), Criminal Procedure Code, the said be kept in safe custody in the pending the orders of the Local Government.—*Letter No. 955 of 17th August*, 1867, *Wilkins*, p. 5.

In the case of *Gajea Peer*, 8 W. R. Cr. L 19, the High Court pointed out that the finding in a case in which the accused was found to have committed the act charged while unsound in mind should have been in the following form —

"The Court, therefore, concurring with the assessors, finds that Gazee Peer did kill Baboo Mundul by striking him on the head with a club ; but that, by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not therefore guilty of the offence specified in the charge, *viz*, that he has committed culpable homicide not amounting to murder by causing the death of Baboo Mundul, and has thereby committed an offence punishable under s. 304 of the Indian Penal Code, and the Court directs that the said Gazee Peer be acquitted, and that, under the provisions of s. 394 (471) of the Code of Criminal Procedure, the said Gazee Peer be kept in safe custody in the pending the orders of the Local Government."

Person acquitted on such ground to be kept in safe custody

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

In the Punjab, reports to the Local Government should be addressed through Commissioners.—*Smyth*, p. 134. In Bengal, Magistrates and Sessions Judges must report direct to the Government of Bengal.—*Government Circular, No. 84, dated 18th October*, 1870

The power conferred on the Local Government has been extended to the Commissioner in Scind. —*Bombay Gazette*, 1874, p. 312.

Where a jury finds that a person was of unsound mind at the time of committing an offence, the High Court will not interfere with the verdict except upon the clearest proof that the jury was mistaken.—*Queen* v. *Doorjodhone Shamonto*, 19 W. R. Cr. 45.

As to trial of deaf mutes see *Emp.* v. *Gahna*, Punj. Rec., 1889, p. 130.

Lunatic prisoners to be visited by Inspector-General

472. When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons, if such person is confined in a jail, or the Visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind ; and he shall be visited once at least in every six months by such Inspector-General or by two of such Visitors as aforesaid ; and such Inspector-General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence

473. If such person is confined under the provisions of section 466, and such Inspector-General or Visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person

under the provisions of section 468; and the certificate of such Inspector-General or Visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or Visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

See s. 433 of Act X of 1872, s. 128 of Act X of 1875, and s. 203 of Act IV of 1877.

This section and the following sections extend the power given by ss. 433 and 434 of Act X of 1872 to discharge from custody or make over to his relatives a person acquitted on the ground of insanity, to the case of persons who being found to be insane at the time of trial are committed to custody.

In the Punjab, reports to the Local Government must be addressed through Commissioners.—*Smyth*, p. 134. In Bengal, such reports must be direct.—*Government Cir., dated 18th October*, 1870.

The power conferred on the Local Government has been extended to the Commissioner in Scind.—*Bombay Gazette*, 1874, p. 312.

Delivery of lunatic to care of relative.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

See note to preceding section.

Power of Governor-General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another.

"**475A.** The Governor-Geneal in Council may direct that any person whom the Local Government has ordered under this Chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India. [Act X of 1886, s. 12.]

Power of Local Government to relieve Inspector-General of certain functions.

"**475B.** The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473 or section 474." [Act X of 1886, s. 12.]

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in section 195.

476. When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

This Chapter, is to be observed, applies not only to Civil and Criminal, but also to Revenue Courts.

The power of the Court to commit the case itself given by s. 471 of Act X of 1872 is saved by the last paragraph of s. 487, *infra*.

This section empowers the Court to send the case to the nearest Magistrate of the first class, and not to "any Magistrate having power to try or commit," as under the former Code.

As to offences committed before Civil or Revenue Courts and triable exclusively by a High Court or Court of Session, see s. 478, *infra*.

Where an offence of the nature specified in s. 195 is committed before a Court, the Court must in every case hold an investigation to see if there is a *primâ facie* case. It may, after this, send the case to a Magistrate for a "regular preliminary inquiry." But if it proceeds under s. 476 to commit direct to the Court of Session, where it has power to do so, it must itself hold a complete preliminary inquiry, framing charges and taking depositions. See *Reg.* v. *Radha Nauth Mozoomdar*, 5 Wym. Cr. Rul. 19.

No sanction should be granted without a preliminary inquiry where such inquiry is necessary under this section.—*Emp.* v. *Narotam Dass*, I. L. R. 6 All. 98. As to when a preliminary inquiry is necessary, see *In re Gauri Sahai*, I. L. R. 6 All. 114; *Emp.* v. *Juala*, I. L. R. 5 All. 62; *Reg.* v. *Chandramma*, I. L. R. 7 Mad. 189, p. 190. In the case of *In re Parsotam Lal*, I. L. R. 6 All. 101, where a Moonsiff gave sanction to prosecute for forgery, where the question, whether a bond had been executed or not, was, after suit brought, by consent of the parties, referred to arbitration, and the arbitrator decided that the bond was a forgery, it was held by STRAIGHT, J., that the Moonsiff not having determined the question of forgery himself, ought to have held a preliminary inquiry to satisfy himself that there were materials to justify a prosecution. It will be observed that in this case the document alleged to be forged was not actually *given in evidence* in the proceedings before the Court, though it was given in evidence in a proceeding before the arbitrator directed by the Court. The law requires only such preliminary inquiry as may be necessary.—*Emp.* v. *Juala Prosad*, I. L. R. 5 All. 62.

It is competent for a Civil Court before which a case may have been settled without any evidence having been gone into and which has grounds for believing that an offence of the nature referred to in s. 195, *supra*, has been committed before it during the pendency of the case, to make a preliminary inquiry and then satisfy itself whether a *primâ facie* case has been made out for granting sanction, and, if so satisfied, to grant sanction, for the prosecution of the person alleged to have committed such offence. A sanction granted after such inquiry is not illegal.—*Shushi Kumar Dey* v. *Shushi Kumar Dey*, I. L. R. 19 Cal. 345, dissenting on this point from *In re Kasi Chunder Mozumdar*, I. L. R. 6 Cal. 440, and *Sangila Vira* v. *Queen*, I. L. R. 6 Mad. 29. The Court expressed no opinion as to whether the sanction was necessary. See notes to section 195, *supra*, and *Abdul Khadar* v. *Jhsera Saheb*, I. L. R. 15 Mad. 224.

The object of the preliminary inquiry is, that the Court may be satisfied that a specific charge coming under the sections mentioned in it ought to be preferred against the accused, and after being so satisfied, it must either commit the case (see s. 487, *infra*), or send it to the Magistrate for inquiry whether a committal should be made or not. See *Kali Prosunno Bagchee, Petitioner*, 23 W. R. Cr. 39. See also *Bhokteram* v. *Heera Kottia*, I. L. R. 5 Cal. 184; *per* AINSLIE, J., p. 187. See *Mutirakal* v. *Reg.*, I. L. R. 3 Mad. 351.

It is unnecessary that the preliminary inquiry contemplated by this section should be conducted in the presence of the accused. All the Court making the inquiry has to do is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate.—9 W. R. Cr. 3: *In re Govindan Nayar*, I. L. R. 7 Mad. 224. The section does not require notice to be given to the accused. See *Emp.* v. *Bhola*, Punj. Rec., 1888, p. 2.

Powers similar to those conferred on Civil and Criminal Courts alike by this section are conferred on Civil Courts by s. 643 of the Code of Civil Procedure (corresponding with ss. 16 and 19 of the repealed Act, XXIII of 1861). But neither that section nor the sections of the Act for which it was substituted direct the Court to hold any preliminary inquiry before sending a case under the section to a Magistrate for investigation. All that is required is, that the Court shall be satisfied that there is sufficient ground for sending the case for investigation to the Magistrate. In the case of *Reg.* v. *Baijoo Lall*, I. L. R. 1 Cal. 450, MACPHERSON and MORRIS, J. J., quashed an order made, according to the return of the Judge who made it, under s. 16 of the repealed Act mentioned, without a preliminary inquiry having been made, on the ground that the law as to procedure in cases within that section was embodied in s. 471 of the Criminal Procedure Code of 1872 (476 of this Code) under which a preliminary inquiry was necessary. From the judgment it would appear, however, that the learned Judges treated the order as really made under the section of the Criminal Procedure Code. See *Umbica Sundari Chowdrani* v. *Ajitoollah Mowlal*, 8 C. L. R. 148.

Before a Court is justified in making an order under s. 476 directing the prosecution of any person, it ought to have before it direct evidence fixing the offence upon the person whom it is sought to charge either in the course of the preliminary inquiry referred to in that section or in the earlier proceedings out of which the inquiry arises.—*In the matter of Khepu Nath Sikdar*, I. L. R. 16 Cal. 730.

In the case of *Emp.* v. *Kashmiri Lall*, I. L. R. 1 All. 625, it was held by a Full Bench of the Allahabad High Court (overruling the cases of *Queen* v. *Jugat Mal*, I. L. R. 1 All. 102, and *Queen* v. *Gur Baksh*, I. L. R. 1 All. 103, and *Reg.* v. *Kulturam Singh*, *ib.* 129), that an offence under s. 193 of the Penal Code could not be tried by the Magistrate before whom such offence was committed. See *Emp.* v. *Baldeo*, I. L. R. 3 All. 322. This is now made clear by s. 487, *infra*.

There are only three cases in which a Court, other than a Judge of the High Court, the Recorder of Rangoon, and the Presidency Magistrates, can try any person for any offence referred to in s. 195 where such offence is committed before himself or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding and these are provided for in ss. 477, 480 and 485. None of these sections is applicable when the accused is charged under s. 175 of the Penal Code.—*Emp.* v. *Sheshayya*, I. L. R. 13 Mad. 24.

Where the Magistrate to whom the case is sent by the Court for investigation, with the necessary sanction, himself investigates it, no complaint is necessary; nor is it necessary when the Court itself holds an investigation.—*Bom. H. C. Ctr.* 43.

The words in s. 195, *supra*, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Moonsiff or a Subordinate Judge or a Judge was obliged to appear before a Magistrate and make a complaint on oath like an ordinary complainant in order to lay the foundation of a prosecution. The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strictest sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.—*Ishri Prosad* v. *Sham Lall*, I. L. R. 7 All. 871 (F. B.), *per* PETHERAM, C. J., and STRAIGHT, J.

If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear grounds for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such persons without any further inquiry than that which he has already held in his own Court.—*In re Mutty Laul Ghose*, I. L. R. 6 Cal. 308; *Rajaram Surma* v. *Gouri Nath Dutt*, I. L. R. 20 Cal. 474. See *Reg.* v. *Baijoo Lall*, I. L. R. 1 Cal. 450.

The Magistrate to whom a case is sent for investigation may discharge the accused, if, in his opinion, the evidence against the accused is not sufficient to warrant their committal to the Court of Session.—*Reg.* v. *Pandurang Mayrat*, 5 Bom. H. C. R. Cr. Cas. 41. The latter Court, however, can, under s. 436, *supra*, direct their committal.

A Magistrate to whom a case of giving false evidence has been sent by a Moonsiff is bound to complete the inquiry, and cannot return the case to the Civil Court.—*Reg.* v. *Jan Mahomed*, 3 B. L. R. Ap. Cr. 47: and see *Reg.* v. *Amrula Nathu*, 7 Bom. H. C. R. Cr. 29.

Revision and Appeal.—The High Court has no power in appeal to set aside an order of a subordinate Court directing a prosecution under s. 476.—*Emp.* v. *Rachappa*, I. L. R. 13 Bom. 109: *Emp.* v. *Narakka*, I. L. R. 12 Mad. 144.

But in the exercise of its revisional powers the High Court is competent to interfere with an order of a subordinate Court whether made under s. 195 or s. 476, directing the prosecution of any person for offences referred to in these sections. Under s. 439 it has the powers conferred on a Court of Appeal by s. 423 to alter or revise any such order.—*In re Khepu Nath Sikdar*, I. L. R. 16 Cal. 730. The High Court, it was said, has jurisdiction when an order has been made under this section to determine whether the discretion given by the section has been properly exercised.—*Chaudhuri Mahomed*, I. L. R. 20 Cal. 349, following *In re Khepu Nath Sikdar*, I. L. R. 16 Cal. 730.

Power of Court of Session as to such offences committed before itself.

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195, and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit or admit to bail and try such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

A Sessions Judge who has directed the trial of a person for having given false evidence before himself in the course of a trial in a judicial nature before him cannot try the case himself.—*Emp.* v. *Mukthum*, I. L. R. 14 All. 354. See s. 487, *post*.

This section has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself—a power of which such Courts were unintentionally deprived by s. 473 of Act X of 1872. See *Pro.*, *24th March*, 1873 : 7 *Mad. H. C. R. Appx.* xvii; *Queen* v. *Umanath Bundhoo Banerjee*, 21 W. R. Cr. 37 : *In re Fatu Iyah Khan*, 3 C. L. R. 500: (8. C.) I. L. R. 4 Cal. 570. See also the cases cited under s. 487, *infra*. See also *Muttrakai* v. *Reg.*, I. L. R. 3 Mad. 351.

There are only three cases, which are provided for by this section and ss. 480 and 485, in which a Court other than a High Court, the Recorder of Rangoon and the Presidency Magistrate, can try any person for any offence referred to in s. 195 where such offence is committed before himself or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.—S. 487, *post* : *Emp.* v. *Shashayya*, I. L. R. 13 Mad. 24.

A District Judge who had, on hearing a civil appeal, sanctioned the prosecution of a person for forgery, it was held, was not debarred from trying the offence in his capacity as Sessions Judge.—*Emp.* v. *D'Silva*, I. L. R. 6 Bom. 479 : *Emp.* v. *Sarat Chandra Rakhit*, I. L. R. 16 Cal. 766, p. 770.

As to what is a judicial proceeding, see *Emp.* v. *Chait Ram*, I. L. R. 6 All. 103.

With reference to the words 'brought under its notice in the course of a judicial proceeding see the case of *Queen* v. *Nomal*, 12 W. R. Cr. 69 : (8. C.) 4 B. L. R. A. Cr. 9, where the expression 'under its own cognizance' which was to be found in s. 472 of the former Code was considered. That expression, it was said, was meant to provide for a case where it is brought under the notice of the Court of Session in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him. If, on a trial of a prisoner before a Court of Session, a witness gives evidence which contradicts that given by the same witness before the committing officer, and there is no evidence whatever to show which statement is true, it cannot be said to be within or under the cognizance of the Sessions Judge that the witness has given false evidence before the committing officer. What is brought under the cognizance of the Judge is, that the witness may have given false evidence before the committing officer. See *Sharma* v. *Emp.*, Punj. Rec., 1884, p. 92.

Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate ; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

See s. 474, paras. 1 and 2, and as to the last para. see s. 476 of Act X of 1872.

Those sections, which were restricted to offences committed before the Civil Court and triable exclusively by a Court of Session, did not apply, as the present section does, to Revenue Courts.

It will be observed that this section applies not only to offences committed before a Civil or Revenue Court, but to offences brought under the notice of such Courts in the course of a judicial proceeding (see note to preceding section), and that the powers given by the section may be exercised also in cases which the Civil or Revenue Court thinks ought to be tried by the High Court or Court of Session, whether triable exclusively by such Courts or not.

The power of a Civil or Revenue Court to commit a case to the Court of Session after completing the preliminary inquiry is restricted to the cases provided in the section,—*viz.*, where offences exclusively triable by a Court of Session are committed before the Civil or Revenue Court, or offences which such Courts think ought to be tried by a Sessions Court or High Court. Section 476 deals with a more extended class of cases,—*viz.*, all those mentioned in s. 195 in which not merely a Civil Court, but any Court, Civil, Criminal, or Revenue, and whether possessing or not the power to commit to the Court of Session, is of opinion that there is sufficient ground for inquiry. Under that section one of two courses may be adopted by the Court,—that is to say, it may either commit the case to the Court of Session or High Court (see s. 487), if and when it has power to do so, or it may send the case to a Magistrate having power to try or commit to the accused for trial. See *Emp.* v. *Popat Nathu*, I. L. R. 4 Bom. 287.

If the Judge of the Civil Court intends to proceed under the provisions of this section, he must complete the investigation and commit or hold the accused persons to bail. See 1 W. R. Cr. 5.

The granting of a sanction to a private person under cl. (*c*) of s. 195 does not debar a Civil Court from proceeding under s. 478; nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar, till set aside, to a proceeding under that section.—*Emp.* v. *Shankar*, I. L. R. 13 Bom 384.

See notes to ss. 195 and 476.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure of Civil Court in such cases.

See s. 475 of Act X of 1872. Under that section the commitment was directed to be to "the Magistrate of the District or other Magistrate of the 1st class." Now it must be to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial. The Magistrates empowered to commit for trial are, besides the Presidency Magistrate and District Magistrate, the Subdivisional Magistrate, the Magistrates of the first class, or any Magistrate empowered in that behalf by the Local Government.—*Section* 206, *supra*.

Under s. 475 of Act X of 1872, the Court making the commitment was directed to frame and send a charge with the order of commitment. This section directs a charge to be sent.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Procedure in certain cases of contempt.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

Under the former Code, the imprisonment in default of payment was directed to be in a civil jail. This section is silent as to the jail in which the imprisonment shall be carried out.

On the Same Day:—The procedure laid down by the section should be strictly followed.—*Emp.* v. *Patambar Baksh*, I. L. R. 11 All. 361. See s. 537, *post*.

There are only three cases in which a Court other than a High Court, the Recorder of Rangoon and the Presidency Magistrates can try any person for any offence mentioned in s. 195, *supra*, where such offence is committed before himself or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.—s. 487, *post*. See *Emp.* v. *Sheshayya*, I. L. R. 13 Mad. 24.

Section 175 of the Penal Code relates to the omission to produce documents to a public servant by a person legally bound to produce them. Section 178 relates to the refusal to take an oath or affirmation when duly required by a public servant to do so. Section 179 relates to the refusal to answer questions put by a public servant authorized to put such questions. Section 180 relates to the refusal to sign a statement when required to do so by a public servant legally competent to require that the statement shall be signed. Section 228 relates to the intentional insult or interruption to a public servant sitting in any state of a judicial proceeding.

Where a person is committed to jail for contempt, the Government is bound to supply him with rations in the same way in which they are supplied to other prisoners in the jail.—3 W. R. C. L. 21.

Prevarication while giving evidence does not constitute an offence punishable under this section, nor under s. 228 of the Penal Code (*Reg.* v. *Auba-bin Bhibrav*, 4 Bom. H. C. R. Cr. 6); nor does refusal or neglect to return direct answers to questions.—*Reg.* v. *Pondu bin Vithaji*, 4 Bom. H. C. R. Cr. 7. But see *Queen* v. *Chota Hurry Pramanick Tantee*, 15 W. R. Cr. 5, and s. 485, *post*.

A contempt of Court being a criminal offence, no person can be punished for such unless the specific offence charged against him be distinctly stated and an opportunity given him of answering. Where a barrister, engaged in his professional duty before the Supreme Court at

Hong-Kong, was, without notice of the alleged contempt or rule to show cause, and without being heard in defence, by an order of that Court, fined and adjudged to have been guilty of several contempts of Court in disrespectfully addressing the Chief Justice while conducting a cause, such order, upon a reference by the Crown to the Judicial Committee, under the Statute 3 and 4, Will. IV, c. 41, s. 4, was set aside and the fine ordered to be remitted—*first*, on the ground that the order was bad, inasmuch as the offences charged were not of themselves such contempts of Court as legally constituted an offence; and *secondly*, that even if they had been so, no distinct charge of the several alleged offences was stated, and no opportunity given to the party accused of being heard before passing sentence.—*In re Pollard*, L. R. 2 P. C. 106.

As to power of High Court to punish for other contempts of Court, see *Surendronath Banerjee* v. *Chief Justice of Bengal*, I. L. R. 10 Cal. 109 (P. C.), and notes to s. 5, *supra*.

An officer, before whom, while acting in a particular capacity, a contempt has been committed punishable under s. 228 of the Indian Penal Code, cannot in another capacity take up and try the offence.—*Reg.* v. *Chunder Seekur Roy*, 12 W. R. Cr. 18.

An appeal lies from an order under this section.—*Section* 486, *infra*.

No fee shall be chargeable for serving and executing any process, such as a notice, rule, summons or warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of, and punishing any act done, or words spoken, in contempt of its authority. Rule II, cl. 1, under s. 20 of Act VII of 1870.—*Wilkins*, p. 87.

For warrant of commitment in cases of contempt when a fine is imposed, see Sched. V, No. 38.

Record in such cases.

481. In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

In the case of *Panchanda Tambiran*, 4 Mad. 229, where the Magistrate did not specifically record his reasons and the facts constituting the contempt with the statement of the offender, the High Court set aside the order inflicting a fine.

Procedure where Court considers that case should not be dealt with under section 480.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

See s. 487, *post*.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

This section follows the ruling in the case of *In re Sardhari Lal*, 13 B. L. R. Apx. 40, where it was held, that a Sub-Registrar under s. 82 of the Registration Act, being a public officer, and proceedings before him being judicial proceedings, within s. 228 of the Penal Code, had jurisdiction under s. 435 and s. 439 of Act X of 1872 (ss. 481 and 482) to try an offence under s. 228 of the Penal Code.

Discharge of offender on submission or apology.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

See s. 457, and *Emp.* v. *Shahayya*, I. L. R. 13 Mad. 24.

See ss. 121, 132, 146, 148, 149, 150, 151, 172 of the Evidence Act, I of 1872. As to effect of a witness refusing to answer, see *Reg.* v. *Gopal Doss*, I. L. R. 3 Mad. (F.B.) 271, and the cases there cited.

In the case of *In re Ganesh Narayan Sathe*, I. L. R. 13 Bom 600, the Court doubted whether a complainant refusing to answer questions is a witness punishable either under s. 485 of this Code or s. 179 of the Penal Code.

There is an appeal from a sentence under this section. See next section.

For form of Magistrate's or Judge's warrant of commitment under this section, see Sched. V, No. 39.

Appeals from convictions in contempt-cases.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

As to the period of limitation for an appeal under this section, see note to s. 404, *ante*.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

Section 473, of Act X of 1872, with which the first part of this section corresponds, provided simply that "No Court shall try any persons for an offence committed in contempt of its own authority," and much difficulty was experienced in determining what was an offence committed in contempt of its own authority. It was held by a Full Bench at Allahabad, overruling *Queen* v. *Kullaram Singh*, I. L. R. 1 All. 129, and *Queen* v. *Jagat Mal*, *ib.* 162, that an offence against public justice was a contempt of Court.—*Emp* v. *Kashmiri Lall*, I. L. R. 1 All. (F.B.) 625. It was so held also by the Bombay High Court in the cases of *Reg.* v. *Navranbog Dulabeg*, 10 Bom. H. C. R. 73· *Reg.* v. *Gaji Kom Rana*, I. L. R. 1 Bom. 311: *Reg.* v. *Parsapa Mahadsapa*, I. L. R. 1 Bom. 339. In the two latter cases the Court dissented from the two cases in the Allahabad Court, which were overruled by the Full Bench of that Court in *Emp.* v. *Kashmiri Lall*, I. L. R. 1 All. (F. B.) 625.

The rulings of the Madras High Court are in accordance with the later decisions of the Allahabad and Bombay High Courts. See *Mad. H. C. Pro* , 24th *March* 1873 ; 7 *Mad. H. C. R. Apx. xvii.*

A District Judge who had, on hearing a civil appeal, sanctioned the prosecution of a person for forgery, was held under the Act of 1872 not to be debarred from trying the offence in his capacity of Sessions Judge.—*Emp.* v. *D'Silva*, I. L. R. 6 Bom. 479 : *Emp.* v. *Makhdum*, I. L. R. 14 All. 354. So under the present Code it was held that a Sessions Judge is not debarred from trying a person for an offence under s. 196 of the Penal Code when he has as District Judge given sanction for the prosecution under the provisions of s. 195 of this Code.—*Emp.* v. *Sarat Chundra Rukhit*, I. L. R. 16 Cal. 766, overruling *Madhub Chundra Mozumdar* v. *Nowodeep Chundra Pundit*, I. L. R. 16 Cal. 121.

With reference to this point the following Circular Order was issued by the Chief Court of the Punjab :—In a criminal ruling in the case of *Crown* v. *Sain Das*, published as No. 25 in the Punjab Record of 1873, it was held by the Chief Court, that a Court before which the offence of giving false evidence has been committed is not precluded from trying the offence itself.

A similar view is embodied in Book Circular XXVII of 1865.

2. In a recent* unpublished judgment of the Chief Court, however, a contrary opinion has prevailed, and as the discrepancy between the two views is likely to mislead, and cases of the nature described are not infrequent, the Judges issue this circular in supersession of the instructions conveyed in Book Circular XXVII of 1865 above referred to.

3. The Judges, having fully considered the question, have unanimously adopted the view expressed in a ruling of the Bombay High Court, No. 53, dated 21st May 1873, in the case of *Reg.* v. *Navaranbog Dulabeg*, which is to the effect that every attempt to pervert the proceedings of a Court to an improper end is a contempt of its authority within the meaning of s. 473, Criminal Procedure Code.

Accordingly, when any of the offences specified in s. 467, 468, or 469 (195)is committed before a Court, such Court is, in the opinion of the Chief Court, debarred by the terms of s. 473, Criminal Procedure Code, from trying the offence itself.—*Punjab Gazette*, 1874, Part III, p. 276 ; *Smyth*, p. 377.

The Calcutta High Court, on the other hand, considered that by the words "in contempt of its own authority" the Legislature seems to have intended, not any offence which may be construed into a contempt of the authority of the Court, but such offences as are ordinarily considered and are classed in the Indian Penal Code as offences against the authority of a Court,—that is to say, the offences mentioned in Chapter X of the Indian Penal Code, and probably also the offences mentioned in s. 228 of that Code.—*Safatoollah*, *Petitioner*, 22 W. R. Cr. 49.

Under this section, however, which refers specifically to the particular offences mentioned in s. 195, when committed in contempt of the authority of the Court, it would seem that the difficulty which arose under s. 473 of Act X of 1872 would hardly arise.

The Legislature, in substituting the descriptions of the presiding officers of the Courts referred to, for the word 'Court' used in s. 473 of Act X of 1872, appears to have adopted the decision of the Madras High Court that 'Court' was to be construed as referring to the office or to the person of the Magistrate or Judge before whom the offence was committed, and that the prohibition in the section was therefore a personal one.—*Pro.*, *2nd October* 1877 I. L. R. 1 Mad. 305.

An Assistant Sessions Judge, it was held, is a different Court from the Sessions Judge.—*Reg.* v. *Gulabdas Kuberdas*, 11 Bom. H. C. R. 98.

As to the construction of the words 'brought under his notice,' see *Queen* v. *Nomal*, 4 B. L. R. Cr. 11, and the notes to s. 477, *supra*. In the case of *Emp.* v. *Baldeo*, I. L. R. 3 All. 322, B charged certain persons before a Police-officer with theft. The charge was brought by the Police to the notice of the Magistrate having jurisdiction, and he directed the Police to investigate into the truth of the charge. Having ascertained that the charge was false, the Magistrate took proceedings, under s. 211 of the Penal Code, against B on a charge of making a false charge and convicted him of that offence. It was held that, as the false charge was not preferred by B before the Magistrate, the offence of making it was not a contempt of his authority, and that the Magistrate was not precluded from trying B himself. There the original charge was not, it is to be observed, brought under the notice of the Magistrate in a judicial proceeding.

As to the second paragraph of this section, see s. 471 of Act X of 1872.

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* *Crown* v. *Ramun.* Charge : s. 211, Indian Penal Code.

A Court of Sessions has no power to commit to itself a person charged under s. 193 of the Indian Penal Code with giving false evidence before it.—*In re Fata Jyah Khan*, 3 C. L. R. 599. See the remarks of AINSLIE, J., in the case of *Bhokteram* v. *Heera Kolita*, I. L. R. 5 Cal. 187. See also *Emp.* v. *Sukhari*, I. L. R. 2 All. 405: *Sundriah* v. *The Queen*, I. L. R. 3 Mad. 254.

A Magistrate who issues an order under s. 145 has no jurisdiction under s. 188 of the Penal Code to punish a person for disobeying it.—*Reg.* v. *Ranchod Dayal*, 10 Bom. H. C. R. 424.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate, or a Magistrate of the first class, may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

Enforcement of order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

The power to cancel the order given by the penultimate clause of the section is new, as also the direction as to the manner in which evidence is to be recorded. The procedure in summons-cases is contained in Chapter XX. See *Kali Dasi* v. *Durga Churn Natk*, I. L. R. 20 Cal. 351.

An application for maintenance is not a complaint of an offence.—*Hildephonsus* v. *Malone*, Punj. Rec., 1885, p. 26. See s. 177, *supra*. And proceedings under this section are in the nature of civil proceedings within the meaning of s. 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf.—*Nur Mahomed* v. *Bismulla Jan*, I. L. R. 16 Cal. 781. See *In re Tokee Bibee* v. *Abdul Khan*, I. L. R. 5 Cal. 530: S. C. 5 C. L. R. 458.

Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding and arrears levied under a single warrant, the Magistrate acting under this section has no power to award a heavier sentence in default than one month's imprisonment.—*Emp.* v. *Narain*, I. L. R. 9 All. 240: but the section

apparently contemplates a separate warrant for each breach, and not a cumulative warrant and cumulative punishment—*Ibid, per* EDGE, C. J., and STRAIGHT, J.

Having regard to s. 2, cl. (18) of the General Clauses Act (I of 1868) the imprisonment under this section may be either simple or rigorous—*Ibid, per* STRAIGHT, J.

Imprisonment cannot be awarded in anticipation of default to an order for a monthly maintenance.—*Mad. H. C. Pro., 7th December* 1866 *and 24th April* 1873 : *Weir*, p. 16.

A warrant may be issued for the recovery of arrears of maintenance. Though a warrant is permissible on every breach of the order to pay maintenance, the result of issuing it for an aggregate of payments is, that one *month's* imprisonment would alone be awardable for the amount unpaid after the execution of the warrant. See *Mad. H. C. Pro., 19th April* 1871.

A Magistrate may *both* levy the amount of the fine *and* order the defaulter to be imprisoned for a term not exceeding one month for each allowance remaining unpaid (*Mad. H. C. Pro., 11th November* 1874 ; *Weir*, p 46), that is, after the execution of the warrant.

As to the manner in which fines are to be levied, see ss. 386-7, *supra*.

The third para. of this section ought to be construed strictly and as far as possible in favour of the subject. *Emp.* v. *Narain*, I. L. R. 9 All. 240, *per* STRAIGHT, J.

For form of warrant of imprisonment on failure to pay maintenance, see Sched. V, No. 40, and for form of warrant to enforce the payment of maintenance by distress and sale, see Sched. V, No. 41.

Imprisonment.—Imprisonment is now to be awarded only when the allowance remains unpaid after the execution of the warrant of distress. In making an order for maintenance, the Court has no power to pass an order for imprisonment in default of payment of the amount ordered.—5 *Mad. H. C. R. Apx. xxxiv; Pro., July 28th*, 1870, or to pass an alternative order for a specified quantity of grain.—*Emp.* v. *Chuhar Singh*, Punj. Rec., 1887, p. 5, or an order for a separate residence.—*Emp.* v. *Chajju*, Punj. Rec., 1887, 60. Nor has the Court power, in making an order for maintenance, to take security for possible default.—*Kanoo Soudagur* v. *Alabundee Bewa*, 24 W. R. Cr. 72.

A sentence of imprisonment awarded under this section for wilful neglect to comply with an order to pay maintenance is absolute, and the defaulter is not entitled to release upon payment of the arrears due.—*Biyacha* v. *Moidin Kutti*, I. L. R. 8 Mad. 70.

An order for maintenance made by a Magistrate not empowered to make such order is void.—*S.* 530 (*r*), *infra*.

Jurisdiction.—Where a wife, after a temporary absence from her husband on a visit, found on her return that he was living in adultery, and thereupon left him and went to live in a different district, and in that district applied for an order for maintenance against her husband, it was held by the Allahabad High Court that the wife being justified in refusing to live with her husband and in choosing her own place of residence, the neglect of the husband to maintain her was an offence within the jurisdiction of the Court at the place where the wife resided.—*In re De Castro*, I. L. R. 13 All. 348 : *In re Todd*, 5 All. 237. In Bombay, however, it was considered that the Court having jurisdiction is the appropriate Court of the district in which the person resides against whom the complaint is made.—*In re Fukrudin*, I. L. R. 9 Bom. 40.

A Magistrate having jurisdiction cannot refer the matter of the complaint to a Magistrate of the second class for inquiry and report. He ought to make the enquiry himself.—*Venkata* v. *Paramma*, I. L. R. 11 Mad. 199.

A Magistrate of the first class has, as such, power to pass an order under this section, although he may not be empowered to take cognizance of offences without complaint.—*In re Todd*, 5 All. 237.

Further, an order made by the Magistrate under this section must be founded upon legal proof in the same proceedings and not upon knowledge acquired by the Magistrate in some other case.—*Lopolee Domnee* v. *Tikha Moodai*, 8 W. R. Cr. 67 : (S. C.) 4 Wym. Cr. Rul. 25. See *Gonda* v. *Pyari Doss Gossain*, 13 W. R. Cr. 10.

A Hindu not divided from his father can be ordered to maintain his wife under this section.—*Emp.* v. *Ramasami*, I. L. R. 13 Mad. 17.

The last paragraph of the section provides that all evidence under this Chapter shall be taken in the presence of the husband or father. Great hardship, it is conceived, may result from this provision, where a person against whom an order for maintenance has been passed leaves the district, and an application is made to enforce the order against him. But under the old Code, which contained no such provision, the Magistrate who had made an order for maintenance, it was held, might have issued a warrant for collection of arrears of maintenance when the husband was out of his jurisdiction.—*Queen* v. *Karri Papayamma*, I. L. R. 4 Mad. 230. Apparently a warrant might still issue under s. 490, but there may be a question whether the order could be enforced by imprisonment, if the evidence were not taken in the presence of the person against whom the order was made.

In determining questions under this Chapter as to the maintenance of wives and families, a Magistrate has no power to enter into any question as to the lawful guardianship of a child (*Lal Das* v. *Nekunjo Bhaishiani*, I. L. R. 4 Cal. 374 : *Mahtab Bibi* v. *Alla Bakhsh*, Punj. Rec., 1885, p. 38) ; nor is he warranted in ordering a mother to surrender her illegitimate child to its father, although the child be of the age of maturity, and her refusal to do so is no ground for stopping an allowance previously directed to be paid to her.—*Ibid.*

Where it appeared that the husband had not been called upon to maintain his wife, who had up to that time lived with her father, and that the father had refused to let the wife live with her husband without the payment of a sum of money, the High Court set aside an order directing the husband to pay his wife a monthly sum for maintenance.—*Mussamut Somree* v. *Jitun Sonar*, 22 W. R. Cr. 30.

An offer by a Hindu having two wives, to maintain the first wife by allowing her to live in his house and by supplying her with grain to be cooked and eaten separately, coupled with a refusal to live with her as husband and wife, is not a sufficient offer of maintenance.—*Marakhal* v. *Gauttappa Goundan*, I. L. R. 6 Mad. 371.—But See *In re Jitubdas*, I. L. R. 10 Bom. 269. Nor is the fact that the husband, a Hindu, had married a second wife, a sufficient reason to justify an order for separate maintenance.—*Arumugam* v. *Tulukanam*, I. L. R. 7 Mad. 187. *Attur Singh*, Punj. Rec., 1887, p. 177.

The mere fact that husband and wife cannot agree to live together is no ground for decreeing separate maintenance to the wife.—*Mussamut Jesmut* v. *Shoojaut Ali*, 6 W. R. 59.

An order for maintenance of a child should fix such a sum as, with reference to all the circumstances and to the means of the person who neglects or refuses to maintain the child, may seem reasonable, but the amount should be definitely fixed. There is no provision authorizing a prospective enhancement of the amount, as on the child attaining a particular age.—*Mussamut Mungto* v. *Jumna Dass*, 2 All. 454: or maintenance at a progressively increasing rate, but the fact that a child has grown older might constitute a change of circumstances calling for variation of the rate. —*In re Ramayee*, I. L. R. 14 Mad. 398; *Upendra Nath Dhal* v. *Soudamini Dasi*, I. L. R. 12 Cal. 535 A Magistrate may, however, under the next section, from time to time, alter the rate of the monthly allowance granted as maintenance.—*Upendra Nath Dhal* v. *Soudamini Dasi*, I. L. R. 12 Cal. 535.

An order cannot be made for the maintenance of an unborn child.—*Mussamut Larlee* v. *Bunse Ditchit*, 3 All. 70.

If the form of marriage that has been gone through is sufficient to enable the offspring of the union to inherit, the wife will be entitled to maintenance.—*Queen* v. *Bahadur Singh*, 4 All. 128. See *Queen* v. *Judoo Mussulmanee*, 6 W. R. Cr. 60.

An order for maintenance under this section, it was held in Allahabad, does not after divorce become inoperative before the expiration of the divorced wife's *iddat* or period of probation.—*In re Bin Muhammad*, I. L. R. 5 All. 226. So in Madras it was held, that a divorced Mahomedan wife is entitled to maintenance during the *iddat*, but an order for maintenance for a period subsequent to the expiration of the *iddat* is illegal. If she be pregnant, she would be entitled to maintenance during gestation.—*Mad. H. C. Pro., 2nd December*, 1879; *Weir*, p. 22. See *Nepoor Aurut* v. *Jurai*, 19 W. R. Cr. 73: *In re Luddun Sahiba*, I. L. R. 8 Cal. 736: (S. C.) 11 C. L. R. 237. Moreover, although a *moota* wife under the law of the Shia sect of Mahomedans is not entitled to maintenance, yet such a wife is entitled to claim maintenance under this section.—*In re Luddun Sahiba*, I. L. R. 8 Cal. 736: (S. C.) 11 C. L. R. 237. The husband does not, by giving up the unexpired portion of the term fixed by a *moota* marriage, terminate the relationship of husband and wife.—*Ib.*

Although no specific power to cancel an order for maintenance was given by the former Codes, a Presidency Magistrate, it was held, under s. 234 of Act IV of 1877, was competent to stay an order for maintenance, and to refuse to issue his warrant under the 3rd clause of that section, and to try all questions raised before him which affected the right of a woman to receive maintenance. There can, it was held, be no distinction raised between a dissolution of marriage obtained under the Indian Divorce Act and a dissolution obtained under the Mahomedan law. It is only on proof of the existence of the relationship of husband and wife that a Magistrate can make an order granting maintenance to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section.—*Abdur Rahaman* v. *Sakhina*, I. L. R. 5 Cal. 538: (S. C.) 5 C. L. R. 21: *In re Abdul Ali Ismailji*, I. L. R. 7 Bom. 180. See *In re Kasam Pirbhai*, 8 Bom. H. C. R. 95: *Nepoor Aurut* v. *Jurai*, 19 W. R. Cr. 73.

The allowance being payable from the date of the order, an order directing the payment of maintenance in arrears from a certain date is illegal.—*Mad. H. C. Pro., 30th July*, 1875; *Weir*, p. 22. But there is nothing in this section to render the levy of accumulated arrears of maintenance by a single warrant illegal.—*Mad. H. C. Pro., 11th November*, 1874; 7 *Mad. H. C. R. Appx.* xxxvii.

The grounds upon which an order awarding maintenance is based should be stated in the order, —*Mad. H. C. Pro., 28th November*, 1873; *Weir*, p. 22.

When a duly empowered Magistrate had decided a matter under this section by dismissing the application after hearing the evidence offered, the District Magistrate, it was held, under Act X of 1872, was not competent to entertain the complaint *de novo*.—*Mussamat Jamoti* v. *Gadalo Kumar*, 1 C. L. R. 89. But the fact that an application for maintenance has been made in one district and rejected on the ground of jurisdiction, is not a bar to another application of a similar character before a Magistrate who has jurisdiction.—*In re Todd*, 5 All. 237. See *Shaik Fakurdin*, I. L. R. 9 Bom. 40.

An order under this section does not bar a civil suit by a wife against her husband for maintenance (*Lallah Gopee Nauth* v. *Musst. Jestun Kooer*, 6 W. R. Civ. 57); nor is a decision of a Civil Court refusing to enforce a contract for the maintenance of a woman on the ground of limitation a bar to an application under this section.—*Meiselback, Petitioner*, 17 W. R. Cr 49.

An agreement by a husband to maintain his wife by giving her a house and jewels, and by delivering to her annually a certain quantity of grain and money, cannot be enforced under this section.—*Viramma* v. *Narayya*, I. L. R. 6 Mad. 283: *Fazlunnissa*, Punj. Rec., 1890, p. 23.

An agreement by the mother with the father of an illegitimate child to accept a particular sum for maintenance of the child is not binding on the guardian of the child after the death of the mother.—*Hildesphonsus* v. *Malone*, Punj. Rec., 1885, p. 26.

An order made by a Magistrate directing a Mahomedan husband to pay a sum monthly for the maintenance of his wife does not deprive such husband of his inherent right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced.—*In re Kasam Pirbhai*, 8 Bom. H. C. R. Cr. Cas. 95: *Abdur Rahaman* v. *Sakhina*, I. L. R. 5 Cal. 538: (S. C.) 5 C. L. R. 21: *In re Abdul Ali Ismailji*, I. L. R. 7 Bom. 180—except for period of *iddat*.

It is open to a husband, upon whom an order to make an allowance for the maintenance of his wife has been made, to prove afterwards that his wife is living in adultery and upon such proof, a Magistrate is justified in cancelling the order.—*In re Chaku*, 8 Bom. H. C. R. Cr. Cas. 124. Where, on an application by a husband for the cancellation of an order for maintenance on the ground of the wife's adultery, the Magistrate rejected the application on the ground that the wife's adultery was not established, the Allahabad High Court held that another Magistrate was not competent upon a subsequent application, to re-open the matters which had already been adjudicated upon, and therefore could not legally make an order for discontinuance of maintenance upon proof of adultery by the wife prior to the former application.—*Laraith* v. *Ram Dial*, I. L. R. 5 All. 224.

An order for the payment of a monthly allowance to an illegitimate child is not a conviction for an offence, and consequently is not appealable.—*Reg.* v. *Golam Hossein Chowdhry*, 7 W. R. Cr. 10: (S. C.) 3 Wym Cr. Rul. 7. Such an order is, however, a judicial proceeding (*Reg.* v. *Thaku bin Ira*, 5 Bom. H. C. R. Cr. 81), and as such subject to the revisional jurisdiction of the High Court. See s. 435–439.

An insolvent who has obtained a protection order is not liable to arrest or imprisonment in respect of arrears of maintenance due under an order made by the Magistrate included in the schedule filed by him.—*Tokee Bebee* v. *Abdool Khan*, I. L. R. 5 Cal. 536: (S. C.) 5 C. L. R. 458. WILSON, J., in that case, doubted whether the protection order would protect the insolvent from proceedings in respect of maintenance accruing subsequently to the filing of the schedule.

"Cruelty" is not necessarily limited to personal violence.—*Ruknin* v. *Pyare Lal*, I. L. R. 11 All. 480. See *Kelly* v. *Kelly*, L. R. 2 P. D. 59: *Tomkins* v. *Tomkins*, 1 S. and T. 168.

The proviso to this section does not authorize a Magistrate to entertain applications for separate maintenance, on the ground of ill-treatment from wives whose husbands have not neglected or refused to maintain them, but who have of their own accord left their husband's house and protection, and to order allowances to be paid to such wives on evidence of ill-treatment.—*In re Thompson*, 6 All., 205.

Revision.—The High Court alone can interfere by way of revision with an order under this section.—*Subal Doani* v. *Kaliram Doni*, 20 W. R. Cr. 58. In that case the High Court declined to interfere with an order of a Magistrate declaring a person to be the father of an illegitimate child, when it appeared that the Magistrate acted upon the sworn testimony of the mother, and that he called before him the person complained of as being the reputed father.

Alteration in allowance

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

A person aggrieved by an order directing him to pay a certain sum for maintenance should apply to the Magistrate under this section.—*Goyamoney Surinee* v. *Mohesh Chunder Shaha*, 9 W. R. Cr. 1; see *Mahtab Bibi* v. *Alla Bakhsh*, Punj. Rec., 1885, p. 38.

If after an order has been made for maintenance the claim is released the Magistrate is not bound to enforce the order.—*Rangamma* v. *Muhammad Ali*, I. L. R. 10 Mad. 13.

The fact that a child has grown older may constitute a change or circumstances justifying a variation of the rate order for his maintenance.—*In re Ramayee*, I. L. R. 14 Mad. 39.

Under the rules framed by the Calcutta High Court in accordance with cl. ii, s. 20 of the Court-Fees Act, 1870, a fee of one rupee is chargeable for serving and executing a warrant of levy or fine or of maintenance to wife, children, &c., and a percentage on the amount of fine or maintenance levied, *viz.*, 2 per cent. on sums not exceeding Rs. 100. Where the sum exceeds Rs. 100, the 2 per cent. on Rs. 100 and 1 per cent. on the amount of excess.—*Calcutta Gazette*, 1874, p. 478.

Enforcement of order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

This section corresponds with s. 236 of Act IV of 1877. In s. 538 of Act X of 1872, the provision as to copies of orders being given without payment was omitted, but such copies were exempted from payment of Court-fees.—*Notification of Govt. of India, No.* 996, *6th June* 1873, *Gazette of India*, 1873, p. 520; *Wilkins*, p. 137. See *Queen* v. *Karri Pappayamma*, I. L. R. 4 Mad. 330, cited in note to s. 488.

If the defendant proves that the claim for maintenance has been released a Magistrate is not bound to enforce an order for maintenance made under s. 488.—*Rangamma* v. *Muhammad Ali*, I. L. R. 10 Mad. 13.

Where an application is made to enforce an order in favour of a wife and a divorce is pleaded, see *Mahbuban* v. *Fakir Baksh*, I. L. R. 15 All. 143.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a habeas corpus.

491. Any of the High Courts of Judicature at Fort William, Madras, and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law ;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively ;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor-General in Council, No. XXXIV of 1850 or No. III of 1858.

Compare s. 82 of Act X of 1872 and s. 148 of Act X of 1875.

Clause (*a*) in s. 148 of the latter Act has been omitted, as also the clause directing that neither a High Court nor any Judge thereof shall, after the passing of that Act, issue a writ of *habeas corpus* for any of the purposes of the section. See *Gazette of India*, 1876, Part II, p. 397, for the Rules passed under s. 148 of Act X of 1872. These Rules are still in force in the High Court, Calcutta.

The Regulations and Acts referred to in the proviso relate to the custody and confinement of State prisoners.

When a step-mother claimed to be entitled to the custody of her deceased husband's minor child who was living with his paternal uncle and obtained a rule calling upon the uncle to show cause why the child should not be delivered to her and the rule was discharged, it was held that the order discharging the rule was a judgment within the meaning of clause 15 of the Letters Patent, and that therefore under that clause the petitioner had a right to appeal against the order.—*In re Narrondas Dhanji*, I. L. R. 14 Bom. 555.

See *In re Saithri*, I. L. R. 16 Bom. 307. See also s. 551, *post*.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Subdivisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public

Prosecutor has been appointed, appoint any other person, not being an officer of Police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

The first part of this section embodies the provisions of ss. 57 and 58 of Act X of 1872. As to the second paragraph, see s. 202, para. 2, of Act X of 1872. The discretion of the District Magistrate has been curtailed. Now he cannot appoint as Public Prosecutor any officer of Police below the rank of Assistant District Superintendent. The provision giving the Subdivisional Magistrate power, subject to the control of the District Magistrate, to make an appointment under this section, is new.

For definition of 'Public Prosecutor,' see s. 4 (*m*), *ante*.

It has been held by a Full Bench of the High Court at Allahabad that a person appointed under this section by the Magistrate of the District to be a Public Prosecutor for the purpose of a particular case tried in the Court of Sessions, has not the power of a Public Prosecutor with regard to withdrawal, under s. 494, from prosecutions.—*Emp.* v. *Madho*, I. L. R. 7 All. 291. As to appointment of a pleader to act as Public Prosecutor, see *Akbar*, Punj. Rec., 1886, p. 71.

A Public Prosecutor should be without interest in the case which he conducts. His duty is to assist the Court in the furtherance of justice, and not to act as counsel for any particular person or party. "He should not by statement aggravate the case against the prisoners: nor keep back a witness, because his evidence may weaken a case for the prosecution. His only object should be to aid the Court in discovering truth. A Public Prosecutor should avoid any public proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for, or grasping at, convictions."—*Reg.* v. *Kashinath Dinkar*, 8 Bom. H. C. R. Cr. 126, 153, *per* WESTROPP, C. J.

Duty of Prosecution.—Is the duty of the Public Prosecutor at a trial before the Sessions Court to call and examine all material witnesses sent up to the Court on behalf of the prosecution, and the Judge is bound to hear all the evidence upon the charge. But he is not bound to call any witnesses who will not, in his opinion, speak the truth, or support the points he desires to establish by their evidence; but in such circumstances he should explain to the Court that this is his reason for not calling these witnesses, and he should offer to put them in the box for cross-examination by the accused at his discretion.—*Emp.* v. *Tulla*, I. L. R. 7 All. 904. In the absence of any such explanation or other reasonable grounds apparent on the face of the proceedings, inferences unfavourable to the prosecution must be drawn from the non-production of its witnesses.—*Ibid.*

So in the case of *In re Dhunna Kazi*, I. L. R. 8 Cal. 121, it was said that it is *primâ facie* the duty of the prosecution to call all the witnesses who, from their connection with the transactions connected with the prosecution, must be able to give important information.—*Emp.* v. *Stanton*, I. L. R. 14 All. 521: *Emp.* v. *Bankhandi*, I. L. R. 15 All. 6. If such witnesses are not called without sufficient reason being shewn, the Court may properly draw an inference adverse to the prosecution. The only thing that can relieve the prosecution from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn about the accused.—*Ibid.* See *Ram Sahai Lall*, I. L. R. 10 Cal. 1070: *Emp.* v. *Kaliprosonno*, I. L. R. 14 Cal. 245: *Emp.* v. *Stanton*, I. L. R. 14 All. 521. See cases collected in notes to ss. 208, 244 and 252, *ante*, and s. 540, *post*.

With regard to witnesses called before the committing Magistrate and not called in the Sessions Court by the prosecution, it has been held that all the prosecution is bound to do is to have them present at the trial so as to give the Court or counsel for the defence, as the case may be, an opportunity of examining them.—*Emp.* v. *Stanton*, I. L. R. 14 All. 521.

For rules as to the employment of the Government Advocate in connection with criminal prosecutions in the province of British Burma, see *Burma Gazette*, Part II, p. 25.

For rules regarding Public Prosecutors in Bombay, see *Bombay Circulars*, pp. 56—58.

All Sessions Judges and Judicial Commissioners are to allow the Government Pleaders in their several districts to have access to their decisions in all criminal cases in which medical evidence is taken.—*Cal. H. C. C. O., No.* 10 *of* 22*nd September* 1869; *Wilkins*, p. 147.

Sessions Judges in the Lower Provinces should give every facility to Magistrates and District Superintendents of Police for inspecting the records of cases in their Courts, and for the preparation of copies by clerks sent by the District Magistrate, care being taken that the records are not removed from the Judge's office.—*Cal. H. C. C. O., No.* 5 *of* 21*st September* 1880; *Wilkins*, p. 147.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders, privately instructed, to be under his direction.

The Crown in all prosecutions is the prosecutor, and the proceedings are always treated as proceedings between the Crown and the accused.—*Emp.* v. *Murarji Gokuldas*, I. L. R. 13 Bom., p. 391.

No party has any right to be heard, either personally or by pleader, before any Court when exercising its powers of revision; provided that the Court may, if it thinks fit when exercising such powers, hear any party either personally or by pleader (s. 440). But under ss. 436, 439, para. 2, *ante*, which also deal with powers of revision, an accused has a right to appear before any order to his prejudice can be passed against him under that section.

494. Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

Effect of withdrawal from prosecution.

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

This section, it is to be observed, provides for the withdrawal from the *prosecution*, and directs that the accused on such withdrawal shall, if no charge has been framed, be discharged, or shall, if the withdrawal is after a charge has been framed, or when no charge is required, be acquitted.

A prisoner committed on a charge, therefore, cannot be discharged under s. 494, but must be acquitted.—*Emp.* v. *Sivarama*, I. L. R. 12 Mad. 35. Accordingly, where a prisoner was erroneously discharged by a Sessions Court, it was held that as he ought to have been acquitted, a conviction obtained in a second trial for the same offence was bad in law.—*Ibid.*

It has been held by a Full Bench of the High Court at Allahabad that a person appointed by the Magistrate of the District under s. 492, *supra*, to be a Public Prosecutor for the purpose of a particular case tried by the Court of Session, has not the power of a Public Prosecutor with regard to withdrawal from the prosecution under this section.—*Emp.* v. *Madho*, I. L. R. 8 All. 291.

Compare s. 240, *ante*.

495. "Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of Police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council" [Act X of 1868, s. 13]; but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

Permission to conduct prosecution.

Any person conducting the prosecution may do so personally or by a pleader.

"An officer of Police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted." [Act X of 1886, s. 13.]

Compare s. 59 of Act X of 1872, as amended by Act XI of 1874, s. 8, and s. 129 of Act IV of 1877. Under these sections permission might be given to any person to conduct a prosecution. Act IV of 1877, however, excepted the persons who are excepted by this section. In the case of *Queen* v. *Ramchunder Sircar*, 13 W. R. Cr. 18, KEMP and JACKSON, JJ., expressed an opinion that it was highly objectionable for prosecutions in Sessions Courts to be conducted by officers of the Police.

Upper Burma.—In Upper Burma, with the exception of the Shan States, notwithstanding anything in section 495, a Court may allow any Police-officer to conduct a prosecution.—Reg. V of 1892, Sched. (XIV).

Under s. 129 of Act IV of 1877, it was held, that, with the exception of the Advocate-General, Standing Counsel, Government Solicitor or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, could claim the right to conduct the prosecution of any criminal case without the permisson of the Presidency Magistrate.—*Emp.* v. *Butokristo Dass*, I. L. R. 6 Cal. 59.

By s. 270, *ante*, it is provided that in every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor. See notes to that section and to s. 4 (*u*), *ante*:

Any person, whether a private complainant or not, when permitted to conduct a case as prosecutor, may instruct counsel to appear.—*In re Narayan M. Pendshe*, 11 Bom. H. C. R. 102.

In the case of *Emp.* v. *Honkrapa*, I. L. R. 8 Bom. 534, it was held, that this section had not superseded the provisions of s. 23 of the Bombay Police Act, VII (Bom.) of 1867. That section provides: "It shall be lawful for any Police officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence, and to prosecute such person up to final judgment."

CHAPTER XXXIX.

OF BAIL.

Bail to be taken in case of bailable offence.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

No Police-officer other than an officer in charge of a Police-station has power to admit an accused person to bail. See s. 170, *supra*.

No person who has been arrested by a Police-officer shall be discharged except on his own bond or bail, or under the special order of an Magistrate.—*S.* 63, *ante*.

Section 513, *infra*, permits a deposit of a sum of money or Government promissory notes to be given, except in the case of a bond for good behaviour, in lieu of executing a bond.

Where the personal attendance of an accused person is dispensed with, a recognizance-bond, if deemed necessary, should be taken from him and not from his agent.—*Reg.* v. *Lallabhai Jasubhai*, 5 Bom. H. C. Cr. 64. So, where it becomes necessary to adjourn the hearing of a summons-case, the attendance of the accused person may be secured at the adjourned hearing by taking a recognizance from him.—*Queen* v. *Chochu Rai*, 6 N. W. P. Rep., p. 366.

The proceeding in which it has to be determined whether an accused person should be admitted to bail by a Magistrate is a judicial proceeding.—*Mantkam* v. *Queen*, I. L. R. 6 Mad. 63.

Where a prisoner applied to the High Court to be admitted to bail and his petition contained defamatory allegations consisting (*inter alia*) of irrelevant attacks on the trying Magistrate and other officers in the service of the Government of India the Court refused to allow the petition to be filed and ordered it to be returned.—In *re Durant*, I. L. R. 15 Bom. 488.

For form of bond and bail-bond on a preliminary inquiry before a Magistrate, see Sched. V, No. 42.

Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise, are exempted from Court-fees.—*Act VII of* 1870, *s.* 19, *cl. xv*.

When bail may be taken in case of non-bailable offence.

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

The duty of deciding as to the sufficiency or otherwise of bail is with the Court itself and not with the Police.—*Emp.* v. *Gayitri Prosonno Ghosal*, I. L. R. 15 Cal. 455.

Bail ought not to be demanded where the accused has been discharged. It can be demanded only in cases where further inquiry is pending, and the accused has not been discharged. *Ram Lall Tewaree* v. *Soopha Ram*, 10 W. R. Cr. 34 (S. C.) 1 B. L. R. S. N. xxvii.

A Magistrate ought not to demand an accused where there is no evidence, in the expectation of evidence turning up. *—In re Mohesh Chunder Banerjee*, 4 B. L. R. Apx. 1.

The proceeding in which it has to be determined whether an accused should be admitted to bail by a Magistrate is a judicial proceeding *—Manikam Mudali* v. *Queen*, I. L. R 6 Mad. 63.

If, upon an investigation under Chap. XIV, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground, such officer must forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a Police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under s. 170, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused (s 170, *supra*). See also the provisions of s. 171, *supra*.

Officers in charge of Police stations must report to the District Magistrate, or, if he so directs, to the Subdivisional Magistrate, the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise (s. 62, *supra*), and no person who has been arrested by a Police officer shall be discharged except on his own bond or on bail, or under the special order of a Magistrate.—*S.* 63, *supra*.

Power to direct admission to bail or reduction of bail

498. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

The previous section of the present Code provided that a person accused of a non bailable offence should not be released on bail if there appeared reasonable grounds for believing that he had been guilty of the offence charged This section empowers the High Court or Court of Session to direct that *any* person without restriction be admitted to bail A Sessions Court, in referring a case under s. 438, might direct that a person already convicted should be admitted to bail. Section 390 of Act X of 1872 empowered the Court to direct that any *accused* person should be admitted to bail, and it was held by a Full Bench under that section, that a Court of Session had no power to admit a convicted person to bail, a *convicted person* not being an *accused person* within the meaning of the section.—*Reg.* v *Thakur Parshad*, I L. R. 1 All. F. B. 151. It had already been so held in *Reg.* v. *Ram Rutton Mookerjee*, 24 W. R. Cr. 8, and in *Reg* v *Kanhai Shahu*, 23 W. R Cr. 40. See also *Aradhan Mundul* v. *Mayan Khan Takadgeer*, 25 W R 7 *Reg* v. *Mahendra Narayan Banjabhushun*, 1 B. L R Cr. 7, under Act XXV of 1861. In the present section the word 'accused' has been omitted Accordingly, there is now, it would seem, nothing to prevent the High Court or Court of Session from admitting a convicted person to bail.

The following rule has been published for guidance in the N W Provinces —It must be understood that for every bailable offence, bail is a right, not a favour detention in the lock up is the alternative, not the original order. The bail demanded should never be excessive with reference to the social status of the party. The amount of bail and the offence charged, with the section under which it is punishable, should always be stated on the face of the order directing the accused to be detained in the lock up He should be informed also that the friends of the accused may ascertain what is required. Bail may be tendered and must be accepted at any time before conviction. Under s 399 (513) deposit of cash or Government promissory notes may be made in lieu of bail, except in cases coming under Chap. VIII (of security for good behaviour.)—*Smyth*, p 129.

Bond of accused and sureties

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court, as the case may be.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

The Police officer mentioned in this section would appear to be a Police officer in charge of a Police station —*S.* 490, *supra*.

For form of bond and bail-bond on a preliminary inquiry before a Magistrate, see Sched. V, No. 42.

The following rule obtains in the N.-W. Provinces: A considerable diversity of practice exists in carrying out the provisions of the law in regard to taking of recognizances from accused persons and their sureties, and the result of the diversity and irregularity is not only to cause Police-officers to be employed in needless inquiries, but also to keep the accused person in custody pending the result of inquiry into the sufficiency or otherwise of the bail offered. The attention of the criminal authorities is therefore directed to s. 501 (499 of this Act) of the Code of Criminal Procedure, which simply requires the Magistrate to take recognizance in such a sum of money as he may think sufficient from the accused and one or more sureties, and to ss. 396 and 397 (388 and 389), which lay down the proceedings to be adopted to compel payment of the penalty mentioned in the recognizance from the person executing the personal recognizance and from his sureties. At the same time, however, it is the duty of the Magistrates to satisfy themselves that the sureties are in point of substance persons of whom it may be reasonably presumed that they can, if necessary, satisfy the terms of the bail-bond.—*Smyth*, p. 130.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Discharge from custody.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

For form of warrant to discharge a person imprisoned on failure to give security, see Sched. V, No. 43.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest, directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

Discharge of sureties.

On such application being made the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to Presidency Magistrate, District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or

When attendance of witness may be dispensed with.

inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limit of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

Other Magistrates desiring to issue a commission must, under s. 506, apply to the District Magistrate.

The taking of evidence on commission in criminal cases is unkown to English practice, and ought in this country to be most sparingly resorted to—only in extreme cases of delay, expense or inconvenience. See remarks of STRAIGHT, J., in *In re Farid-un-nissa*, I. L. R. 3 All. 92.

Purdanashin Women.—In the case of *Hurro Soondery Chowdhrani*, I. L. R. 4 Cal. 20: (S. C. 3 C. L. R. 93, AINSLIE and BROUGHTON, JJ., allowed a *purdanashin* woman summoned as a witness in a criminal case to be exempted from personal attendance in Court, and to be examined on commission; but the question as to whether *purdanashin* women had a right to such exemption was not apparently considered. In the case of *Farid-un-nissa*, I. L. R. 5 All. 92, STRAIGHT, J., referring to that case, said that while he was not prepared to hold that *purdanashin* women were of right exempted from personal attendance at Court, he would be loath to hold that the word inconvenience in s. 330 of the old Code of Criminal Procedure did not empower the Courts to allow examination by commission in criminal cases, where a witness, according to the customs and manners of the country, ought not to be compelled to appear in public. The case there was a prosecution for defamation, and STRAIGHT, J., was of opinion that the fact of her being a person who had set the criminal law in action materially altered her position in considering whether a commission should issue, and directed the Magistrate that if the complainant whom it was sought to examine on commission was found to be a *purdanashin* lady, and if she elected to attend and support her charge, to allow her to be brought into his room in the Court-house in her palki, or to make such other arrangements as might enable her to remain in it, and strictly preserve her privacy, and to subject her to the least inconvenience or annoyance for the purpose of recording her evidence according to law in the presence of the accused after identification by some approved witness. In another case STRAIGHT, J., said that although there was no doubt that there was no provision in the Criminal Procedure Code which protects *purdanashin* ladies from appearing in a Court of justice, yet it was very undesirable to compel the attendance of such persons.—*In re Basant Bibi*, I. L. R. 12 All. 69.

In *In re Din Tarini Debi* I. L. R. 15 Cal. 775, the High Court in Calcutta allowed a *purdanashin* lady upon an application under this section to be examined upon commission in a house taken by her near to the Magistrate's Court. In the case of *Basant Bibi*, I. L. R. 12 All. 69, STRAIGHT, J., guarded himself from admitting that, as a general principle, *purdanashin* ladies should be allowed to compel the Courts to examine them at some other place than the Court itself directed the Magistrate to make arrangements to take the evidence of a *purdanashin* either in an empty Court-room in the presence of himself the accused and the pleader for the prosecution; or if no empty Court-room was available, in his now private room or some other room in the Court building. See *Hasan Khan* v. *Emp.*, Pun. Rec., 1887, p. 95.

In the case of *Emp.* v. *Counsell*, I. L. R. 8 Cal. 896, WILSON, J., refused to issue a commission in a criminal case before the High Court Criminal Sessions, on the ground that in criminal cases the issue of a commission is a most unsatisfactory course of proceeding and one dangerous to the interests of the prisoner.

In the case of *Emp.* v. *Bal Gungadhar Tilak*, I. L. R. 6 Bom. 285, where a Government servant had executed his recognizance to appear and give evidence for the prosecution at a criminal trial to take place at the High Court of Bombay, and was subsequently ordered to a distant station in public service, and could not, with due regard to public interests, return to Bombay before the time, SARGENT, C. J., allowed him to be examined on commission before his departure from Bombay. The ground, apparently, on which he did so was that there was nothing special in the case to make it necessary that the witness should be personally present at the trial, and his evidence both on examination and cross-examination would be just as effective if taken on commission, as it would if he were to appear in Court.

In the case of *Emp.* v. *Burke*, I. L. R. 6 All. 224, where the accused was charged with dishonestly receiving stolen property, knowing it to have been stolen, at the trial the Sessions Judge, under s. 33 of the Evidence Act, admitted the evidence of the owner of the property in respect of which the accused was charged, and of his wife taken by commission during the inquiry before the Magistrate, and the evidence of the servant of these persons taken at the inquiry, and also the

evidence of the owner of the property taken during the trial under a commission issued under this section. The grounds upon which the Sessions Judge admitted the evidence taken during the inquiry were that the attendance of the witnesses could not be procured without an expense of Rs. 500, an amount which he considered unreasonable, and that the witnesses would be inconvenienced, and their evidence had reference merely to the identification of the property, the subject of the charge. It was held that the evidence had been improperly admitted. OLDFIELD, J., remarking that inconvenience to witnesses was no ground allowed under s. 33 of the Evidence Act, and that the question of identification was a most material one in the case, the whole case resting on it. The Court also held on similar grounds that the case was not one in which the Sessions Judge was justified in issuing a commission.

In the case of *Ratli* v. *Gankim Sose*, I. L. R. 9 Cal. 939, it was held that if, when evidence is taken before commissioners, a document is tendered and objected to on any ground, the opposite party is not precluded from objecting to the document at the trial on any other ground—it not being necessary to state all the objections to the admissibility of a document when it is first tendered. The party objecting is at liberty to take any fresh objection whenever the party producing the document tenders it in evidence at the trial. In the same case it was held that where a commission to take evidence is issued to any place beyond the jurisdiction of the Court issuing the commission, it is not necessary, in order to admit secondary evidence of the contents of a document, that the party tendering it should have given notice to produce the original, nor is it necessary for him to prove a refusal to produce the original.

Under Act X of 1875, s. 76, it was held, that the evidence of a witness taken upon commission was not admissible in a criminal trial held before the High Court, unless it could be shown that such evidence was so taken upon an order made by that Court under s. 76 of that Act, or unless it was admissible under s. 33 of the Evidence Act.—*Emp.* v. *Dabee Pershad*, I. L. R. 6 Cal. 532.

In *Emp.* v. *Jacob*, I. L. R. 19 Cal. 113, it was held that evidence taken under a commission issued by a Presidency Magistrate during the course of an inquiry before him could not be used in evidence at the trial before the High Court, and further that upon the facts before the High Court it was also inadmissible under s. 33 of the Evidence Act.

See *Emp.* v. *Barton*, I. L. R. 16 Cal. 238, where evidence on commission was held to have been rightly received on the trial of a seaman for an offence committed on the High Seas.

Section 33 of the Evidence Act is as follows :—

Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

It would appear that the Courts have no power to issue a commission out of the jurisdiction, except in cases provided for by this section itself. See *Emp.* v. *Moorya Chetty*, I. L. R. 5 Bom. (*F. B.*) 338. See also ss. 188 and 189, *supra*.

Commission in case of witness being within Presidency-town.

504. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to effect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Parties may examine witness.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

The interrogatories must now be such as the Magistrate or Court issuing the commission thinks relevant.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

See Act X of 1872, s. 330, para. 5. Under that section, a Magistrate to whom it appeared necessary that a commission should issue was obliged to apply to the Court of Session to which he was subordinate. Now he must apply to the District Magistrate, who, under s. 503, is empowered to issue a commission.

Return of commission

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties; and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

A commission issued by a Presidency Magistrate cannot be used in evidence in the High Court.—*Emp.* v. *Jacob*, I. L. R. 19 Cal. 113. See notes to S. 503 *supra*.

Adjournment of inquiry or trial.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

As to adjournments generally, see s. 344, *supra*, and the explanation to that section.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

Deposition of medical witness.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Power to summon medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

The deposition must be taken and attested by a Magistrate in the presence of the accused. See *In re Jhubboo Mahton*, I. L. R. 8 Cal. 739. In taking and attesting the deposition in the presence of the accused the Magistrate should by the use of a few apt words on the face of the deposition make it apparent that he has done so.—*Emp.* v. *Pohp Sing*, I. L. R. 10 All. 174. Then the Court in which the deposition is tendered will be bound to presume, that the deposition has been properly taken and attested and to admit it under this section—*Evidence Act, s.* 80: *Kachali Hari* v. *Emp.*, I. L. R. 18 Cal. 129. Before a deposition of a medical witness can be given in evidence at the trial in the Sessions Court it must therefore either appear from the Magistrate's record, or be proved by the evidence of witnesses, to have been taken and attested by the Magistrate in the presence of the accused. The Court is neither bound to presume, nor ought it to presume, under either section s. 80 or s. 114 of the Evidence Act that the deposition was so taken or attested.—*Kachali Hari*, v. *Emp*, I. L.R. 18 Cal. 129: *Emp.* v *Riding*, I. L. R. 9 All. 720: *Emp.* v. *Pohp Singh* I. L. R. 10 All. 174.

The report of a medical officer not given on oath is not evidence and cannot be used under this section.—*In re Chintamonee Nye*, 11 W. R. Cr. 2: *In re Samiruddin*, 10 C. L. R. 11: *Queen* v. *Kaminee Dassee*, 12 W. R. C. R. 25. A medical officer, in giving evidence, may refresh his memory by referring to a report which he has made of his *post-mortem* examination, but the report cannot be treated as evidence.—*Raghoni Singh* v. *Emp.*, I. L. R. 9 Cal. 455: (S. C.) 11 C. L. R. 569.

The evidence of a medical man who has seen and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is made, is admissible, firstly, to prove the nature of the injuries which he observed; and secondly, as evidence of the opinion of an expert, as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and to ask the witness his opinion on these facts —see *per* FIELD, J., *Raghoni Singh* v. *Emp.*, I. L. R. 9 Cal. 455: (S. C.) 11 C. L. R. 569.

In the case of *In re Jhubboo Mahton*, I. L. R. 8 Cal. 739: (S. C.) 12 C. L. R. 233, the medical officer was called in the Sessions Court, and it was contended that as he was called, his deposition taken by the Magistrate was inadmissible; but the High Court held that it was not so, but that, on the deposition being put in, the medical officer might be further interrogated upon any points upon which there had not been sufficient examination by the Magistrate.

The attention of Magistrates is called to s. 323 (509) of the Code of Criminal Procedure, and they are informed that a committing Magistrate should not, except for some special reason, bind over a medical witness, whose evidence he has taken, to appear in the Sessions Court. It is very undesirable that medical men in the districts should be taken away from their dispensaries more frequently, or for a longer period, than is absolutely necessary.—*Bombay Gazette 7th May* 1881.

The deposition of a medical witness, which may be given in evidence under this section, should be put in and read as part of the case for, the prosecution before the accused person is called upon to enter on his defence.—*Cal. H. C. C. O., No.* 11, *2nd September* 1867; *Wilkins*, p. 114.

The attendance of the Civil Surgeon at the Criminal Courts of the station for the purpose of giving evidence is one of his ordinary official duties, and he is not entitled to claim, nor are the Courts authorized to grant, a fee for this duty. When a Civil Surgeon is required to proceed more than five miles beyond the limits of his station, he is entitled to travelling allowance under Resolution of Government of India, dated 26th April 1872, published in the *Punjab Gazette of the 27th April* 1872, at page 1388.

When a medical officer, other than the Civil Surgeon or officer in medical charge of the civil station, is summoned to give professional evidence in a Criminal Court touching the result of a *post-mortem* examination conducted by him in cases not falling within the ordinary discharge of the duties, a fee of Rs. 16 shall be allowed him in addition to the usual expenses payable to witnesses in criminal trials.—*Smyth*, p. 125.

510. Any document purporting to be a report under the hand of *any* [Act X of 1886, s. 14] Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

The words 'any proceeding under this Code' have been substituted for 'any trial or in any preliminary inquiry relating thereto.' The report under the former Code might only be used as evidence in any criminal trial. Under this section it may be used as evidence 'in any inquiry, trial or other proceeding.'

The original report of the Chemical Examiner bearing the signature, and not a copy of the report, should be put in evidence.—*Reg.* v. *Bishumbhur Doss*, 15 W. R. Cr. 49: (S. C.) 6 B. L. R. Apx. 122. Reports of the Additional Chemical Examiner, it had been held by the High Court at Calcutta, could not be used in evidence under this section.—*Emp.* v. *Autal Muchi*, I. L. R. 10 Cal. 1026. Now the amendment made by Act X of 1886, s. 14, has got rid of the difficulty.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

Previous conviction or acquittal how proved.

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment, under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person, with the person so convicted or acquitted.

Under s. 403, a person once convicted and acquitted cannot again be tried for the same offence.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge (s. 221, *supra*). See s. 75 of the Indian Penal Code as to increased punishment in case of previous conviction.

The procedure in case of trial before a jury, or with aid of assessors in case of previous convictions, is laid down by s. 310, *supra*. See s. 348.

Where any European British subject has, upon the summary inquiry mentioned in s. 5 of the European Vagrancy Act, XXI of 1869, been determined to be a vagrant, an office copy of the declaration recorded under that section shall be *primâ facie* evidence that the European British subject named therein has been, upon such inquiry, determined to be a vagrant.—*S.* 30.

Record of evidence in absence of accused.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

See ss. 32 and 33 of the Evidence Act, I of 1872.

Where an accused person has absconded and it is intended to record evidence against him in his absence, it is requisite under this section that the fact of the absconding should be alleged and established before the deposition is recorded.—*Ghurbin Bind* v. *Emp.*, I. L. R. 10 Cal. 1098; *Wahid* v. *Emp.*, Punj. Rec., 1883, p. 47; *Reg.* v. *Etwaree Dharee*, 21 W. L. R. Cr. 12. See s. 33, as amended, of the Evidence Act.

The witnesses for the prosecution should be examined again in the presence of the accused when practicable, notwithstanding that their statements have been previously recorded in his absence.—*Reg.* v. *Bacha Chowkeedar*, 22 W. R. Cr. 33. See *Emp.* v. *Sagambar*, 12 C. L. R. 120.

Where a witness whose deposition has been taken under this section is afterwards examined in the presence of the accused the deposition may under certain circumstances be admissible under s. 157 of the Evidence Act as corroboration of his statement at the trial.—*Emp.* v. *Ishri Singh*, I. L. R. 8 All. 672.

Before depositions are received as evidence care must be taken to see that they are in proper form and duly attested, or otherwise strictly proved.

Depositions taken under this section cannot be admissible under s. 33 of the Evidence Act, because to be admissible under that section the prisoner must have been a party to the proceedings and have had an opportunity of cross-examining the witnesses.—See *Emp.* v. *Ishri Singh*, I. L. R. 8 All. 672.

Such examinations when received are to be detached from the proceedings in the preliminary inquiry and *annexed* to the record of the trial.—*Cal. H. C. C. O., No.* 11 *of 2nd September* 1867; *Wilkins*, p. 114.

Whenever a charge of crime is brought against any person who has absconded and cannot be arrested, the nature and circumstances of its commission, as far as can be ascertained from the statements of persons acquainted with the facts, should be faithfully and minutely recorded, with all its bearings against other parties, as well as the parties suspected. In cases where the crime has terminated fatally, the evidence of the medical officer as to the cause of death should invariably be recorded, as it is of the first importance to find out how the party came by his death.—*Smyth*, p. 121.

CHAPTER XLII.*

PROVISIONS AS TO BONDS.

Deposit instead of recognisance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

* The provisions of this Chapter apply to bonds executed under s. 132 of Act IX of 1890 Railway Act) in case of persons committing offences under the Act.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

Procedure on forfeiture of bond.

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate *or Chief Presidency Magistrate* [Act X of 1886, s. 4], within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

For form of warrant of attachment to enforce a bond, see Sched. V, No. 44; for form of notice to surety on breach of a bond, *ib.*, No. 45; for form of notice to surety of forfeiture of bond for good behaviour, *ib.*, No. 46; for form of warrant of attachment against a surety, *ib.*, No. 47; for form of warrant of commitment of the surety of an accused permitted to bail, *ib.*, No. 48; for form of notice of forfeiture of a bond to keep the peace to the principal, *ib.*, No. 49; for form of warrant to attach the property of the principal on breach of a bond to keep the peace, *ib.*, No. 50; for form of warrant of imprisonment on breach of a bond to keep the peace, *ib.*, No. 51; for form of warrant of attachment and sale on forfeiture of a bond for good behaviour, *ib.*, No. 52; for form of warrant of imprisonment on forfeiture of a bond for good behaviour, *ib.*, No. 53.

The High Court as a Court of Revision has no power to reduce the amount of a recognizance that may have been forfeited (*In re Noor-ool Huk*, 2 C. L. R. 408: (S. C.) I. L. R. 3 Cal. 757: *In re Nilmadhub Ghosal*, 19 W. R. Cr. 1); nor has the Magistrate.—*In re Naki Hazi*, 8 C. L. R. 72: *Emp.* v. *Umra*, Punj. Rec., 1883, p. 2. In such a case the Magistrate of the District should refer the matter to Government if he thinks the amount of the recognizance was excessive.

Before a warrant can issue attaching the property of a surety, he must be called on to show cause why he should not pay the penalty mentioned in his bond, and it must appear clearly on the face of the record that he had such notice given him.—*Khoodee Kolburtnee* v. *Doorgadass Bhattacharjee*, 15 W. R. Cr. 82. A Magistrate ought not to forfeit a recognizance to keep the peace under this section, unless the person charged with the breach has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause has been issued.—*Emp.* v. *Nobin Chunder Dutt*, 4 C. L. R. (F. B.) 243: I. L. R. 4 Cal. (F. B.) 865.

There is no provision in this Code authorizing a Police-officer to take a surety-bond for the production of any person before the Police. Such a bond is *ab initio* void, and a Magistrate has no power to alter it or impose fresh obligations thereunder.—*In re Chandra Sekhar Rai*, I. L. R. 11 Cal. 77. A Magistrate acting under this section must proceed on legal evidence, and the penalty can only be enforced on proof that the bond was duly executed and forfeited.—*Ib.* p. 78.

An order escheating a recognizance or a bail-bond must be made upon evidence duly recorded in the case, and not upon evidence taken in other cases. The terms of this section must be strictly followed. It is not competent to direct that in default of payment the person whose recognizance is forfeited should be imprisoned without first issuing a warrant for the attachment and sale of his moveable property.—*In re Mohesh Chunder Roy*, 10 C. L. R. 571.

There is nothing in this section to prevent an accused person who has forfeited his bail bond from being proceeded against under s. 174 of the Indian Penal Code, notwithstanding that his surety has already been made to pay the penalty mentioned in the recognizances.—*In re Tajvomuddy Lahoree*, 10 W. R. Cr. 4. But when a forfeiture of a recognizance-bond has been proved before a Magistrate, he ought to consider what punishment is suitable for the offence entailing the forfeiture in addition to the penalty due under the bond. He ought not to punish for the offence and then at some other time take steps to recover the penalty.—*In re Parbutti Churn Bose*, 3 C. L. R. 406.

If a person has really forfeited his recognizances to keep the peace, the Magistrate must record evidence in the presence of the accused, proving that he was about to do something which would cause a breach of the peace.—*In the matter of Kalibant Roy Chowdhry*, 3 B. L. R. Apx. 155.

A Magistrate has no jurisdiction to call on a person who has entered into a recognizance-bond under s. 403 (Act X of 1872) to pay the penalty or show cause why he should not pay it, without previous *primâ facie* proof on oath or affirmation (s. 502) that it has been forfeited.—*In re Hartram Birbhan*, 11 Bom. H. C. R. 170.

A recognizance, entered into in one district, to keep the peace towards another, is forfeited if the person making it should be convicted in another district of having assaulted that other person. —*Reg.* v *Sham Sundur Chowdhry*, 2 B. L. R. Ap. Cr. 11.

Where a defendant who merely bound himself to appear on a particular day has fulfilled that condition, the forfeiture of his recognizance, because he did not also appear on the following day, is illegal.—*Mad. H. C. Pro.*, 1868, *9th April* 1869, *and 4th December* 1878; *Weir*, p. 30.

When a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not, nevertheless, forfeit such recognizance, it must be held that he thought it unnecessary to do so. Subsequent proceedings taken after the lapse of a considerable period are bad and contrary to the intention of the law.—*In re Ram Chunder Lalla*, 1 C. L. R. 134.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or if not so appealed, may be revised by him.

Appeal from, and revision of, orders under section 514

If any Magistrate, not being empowered in that behalf, revises under this section an order passed under the previous section, his proceedings are void.—*S.* 530 (*l*), *infra*.

In the case of *Anantha Charri* v. *Anantha Charri*, I. L. R. 2 Mad. 169, under the former Code, where a first class Deputy Magistrate in the Madras Presidency decided that a bond for keeping the peace had been forfeited and thereupon levied the penalty, it was held there were no appeal from his order. Under this section, however, all orders respecting bonds, of whatever description they may be, passed under s. 514, are appealable to the District Magistrate.

As to whether the High Court has power to reduce the amount of a recognizance which has been forfeited, see notes to the previous section.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

Order for disposal of property regarding which offence committed.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

EXPLANATION.—In this section the term 'property' includes, in the case of property regarding which an offence appears to have been committed not only such property as has been originally in the possession or, under the control of any party, but also any property into, or for which the same may have been converted

or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

The first clause of this section corresponds with the first paragraph of s. 418 of Act X of 1872, as amended by Act XI of 1874, s. 38; see s. 115 of Act X of 1875 and ss. 243 and 244 of Act IV of, 1877. The second paragraph embodies a rule issued by the High Court of Bombay, dated the 13th of September 1877 (*Bombay Gazette*, 1879, p. 828), which, however, applied only to Sessions Courts, and directed that the order should be carried out by the committing Magistrate. Now the order of both Sessions Courts and the High Court may be directed to be carried out by the District Magistrate.

The third paragraph appears to be new.

The explanation corresponds with the explanation added to s. 418 of Act X of 1872 by s. 38 of Act XI of 1877.

Upon general principles, where there has been an inquiry or trial and the accused is discharged or acquitted by any Criminal Court, that Court is bound to restore the property into the possession of the person from whom it was taken, unless, as provided by this section, such Court is of opinion that 'any offence appears to have been committed' regarding it, or that it has been used for the commission of an offence. Then such order as appears right for the disposal of the property may be made. See *In re Annapurnabai*, I. L. R. 1 Bom. 630; *In re Anant Ramchander Lothkar*, 10 Bom. 197; *Abdul Khalik*, Punj. Rec., 1888, p. 118. In the first case, A was charged before the Police with the theft of certain property. The Police considered that no theft had been committed, and reported the matter to a second class Magistrate, who, agreeing with the Police, ordered the property to be restored to A. On application by the complainant, the District Magistrate found that A had removed, though not dishonestly, the property from B, a deceased person, and ordered the property to be given by the Police to B's heirs, and it was so given. It was held, that the provisions of Act X of 1872 did not apply. It was further held, that the High Court had no power to direct the restoration of the property already delivered by the Police under an illegal order of the District Magistrate. See *Mad. H. C. Pro., 13th February* 1874, *30th June* 1874, *9th March* 1877; *Weir*, p. 24. The case of *Annapurnabai*, I. L. R. 1 Bom. 630, was followed in *Basuleb Surma* v. *Nazirutdin*, I. L. R. 14 Cal. 834.

An order, after trial, made by a Criminal Court for the restoration of property under this section is conclusive as to the immediate right to possession. Where, however, an order has to be made under s. 523, *post*, the Magistrate may in the inquiry proceed on such evidence as is available and make an order for handing the property to the person he thinks entitled; but this order does not conclude the right of any person, and the real owner may proceed against the holder of the property.—*Emp.* v. *Tribhovan Maneklchand*, I. L. R. 9 Bom. 131.

Where, on acquittal, a Criminal Court passes an order for restoration of property, the proper course for the District Magistrate, if he thinks the order improper, is to direct it to be stayed under s. 520, but not to treat the property as subject to an order under s. 523 and set it aside.—*Emp* v. *Abhram Umar*, I. L. R. 8 Bom. 375; see *In re Annapurnabai*, I. L. R. 1 Bom. 630.

Under the next section the Court may, instead of passing an order under this section, direct the property to be delivered over to the District Magistrate or Subdivisional Magistrate to be dealt with by him under s. 523.

No order can be passed with reference to the disposal of any property in a Criminal Court unless that property is produced before the Court. Such order must be made at the time of passing judgment.—*Rash Mohun Goshamy* v. *Kali Nath Raha*, 19 W. R. Cr. 3.

This section does not place the property at the disposal of the Magistrate in the sense of enabling him to bestow it in charity. The Magistrate should make such legal disposition thereof as seems right,—that is, direct it to be given to some one to whom it seems to belong, or permit it to continue in the possession in which it is found or otherwise.—*Mad. H. C. Pro., 20th July* 1875; *Weir*, p. 24.

Where a person was accused of dishonestly receiving stolen property knowing it to be stolen, and was discharged by the Magistrate, on the ground that there was no evidence that the property was stolen,—it was held, that the Magistrate was competent, believing that the property was stolen, to make an order under the corresponding section (418) of Act X of 1872.—*Emp.* v. *Nilambar Babu*, I. L. R. 2 All. 276.

Where a stolen currency note had been delivered to a *bonâ fide* holder for value, the High Court refused, on conviction of the thief, to restore the note to the person from whom it was stolen.—*In re Mitholi*, I. C. L. R. 339: (S. C.) I. L. R. 3 Cal. 379. A currency note was there held not to be included in the term 'goods' within the meaning of the Contract Act. The rule of law that possession by the taker in good faith is no defence against the owner of a chattel whose possession was lost through theft has no application to a currency note, which, like money, does not stand on the same footing as other chattels. The property in money passes by mere delivery, and nothing short of fraud will graft an exception upon that rule.—*Mad. H. C. Pro., 6th February* 1877: 7 Mad. H. C. R. 233; *Weir*, p. 23.

The words 'any property' which occur in the former Codes, and for which the words 'any document or other property' have now been substituted, were held to include as well property voluntarily produced before the Magistrate by a witness in the case, as property seized by the police or found on the person of the accused.—*Reg.* v. *Ramtas Samaldas*, 12 Bom. H. C. R. 217.

It has been held that the corresponding section of Act X of 1872 did not authorize the Court to order destruction of obscene books surrendered by the accused.—*Emp.* v. *Indarman*, I. L. R. 3 All. 837, but now see the provisions of s. 521.

Appeal.—An order passed under section 517 may be revised by a Court of Appeal, although no appeal has been preferred in the case in which the order was passed.—*Emp.* v. *Ahmed*, I. L. R. 9 Mad. 448. See *Emp.* v. *Joggessar Mochi*, I. L. R. 3 Cal. 479 : *Emp.* v. *Nilambar Babu*, I. L. R. 2 All. 276.

Order may take form of reference to District or Subdivisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Subdivisional Magistrate, who shall in such cases deal with it as if it had been seized by the Police, and the seizure had been reported to him in the manner hereinafter mentioned.

See s. 523, *post*, and the note thereto.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

This section has been taken from the English Statute 30 and 31 Vict., c. 35, s. 10.

Stay of order under section 517, 518 or 519.

520. Any Court of Appeal, Confirmation, Reference or Revision, may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court ; and may modify, alter or annul such order.

The words 'Court of Appeal' were considered in the case of *In re Michell*, 1 C. L. R. 339 : (S. C.) I. L. R. 3 Cal. 379. There a Government currency note was stolen from A and cashed by B for C. On the conviction of C for theft, the Magistrate ordered the note to be given to B. A appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of Appeal, but submitted the case for the orders of the High Court. It was held, that the case might have been disposed of by the Sessions Judge under s. 419 of Act IX of 1872, and that the words 'Court of Appeal' in the section were not necessarily limited to a Court before which an appeal was pending. So, in *Emp.* v. *Ahmed*, I. L. R. 9 Mad. 448, it was held that there is an appeal from an order passed under this section, although no appeal has been preferred in the case in which the order was passed.—See *Emp.* v. *Nilambar Babu*, I. L. R. 2 All. 276.

In the absence of an order under s. 517, the revising authority can pass no order under this section. See *Mad. H. C. Pro.*, *30th April* 1870 ; *Weir*, p. 36.

Destruction of libellous and other matter.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Section 292 and 293 of the Indian Penal Code relate to the sale, &c., and possession of obscene books, pamphlets, drawings, &c. Sections 501 and 502 of the same Code relate to the printing and engraving and sale of substances containing defamatory matter.

Power to restore possession of immoveable property.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

No such order shall prejudice any right or interest to or in such immmoveable property which any person may be able to establish in a civil suit.

The foundation of an order under this section should be the finding of the Court to the effect that the person in whose favour the order is made has been dispossessed of specific immoveable property by the use of criminal force, which force formed a material ingredient in the matter of a criminal conviction; and when such a finding has been arrived at, the order should be in terms to restore the person, who has been so dispossessed, to the property from which he had been dispossessed.—*Mohunt Luchmi Dass* v. *Pallat Lall*, 23 W. R. Cr. 54.

See s. 145.

Procedure by Police upon seizure of property taken under section 51 or stolen.

523. The seizure by any Police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

The first paragraph of this section corresponds with s. 415, para. 1, of Act X of 1872, inserting the words 'respecting the delivery of such property to the person entitled to the possession thereof.' See s. 387 of Act X of 1872 and s. 244 of Act IV of 1877.

The first part of the second paragraph is new. The remainder corresponds with s. 416 of Act X of 1872.

Sections 415, 416, and 417 of Act X of 1872, it was held, contemplated proceedings preliminary to, and independent of, inquiry.—*In re Annapurnabai*, I. L. R. 1 Bom. 630.

The provisions of this section are wider than those of ss. 415 and 416 of Act X of 1872, upon which the decision in case of *In re Annapurnabai*, I. L. R. 1 Bom. 630, was based, and they enable the Magistrate to inquire into the ownership of property seized by the Police and deliver it to the person entitled to it instead of to the person from whom it is taken.—*Emp.* v. *Joti Rajnak*, I. L. R. 8 Bom. 338.

As to the manner in which a proclamation may be issued, see s. 87, *supra*, and see *Emp.* v. *Nilambar Babu*, I. L. R. 2 All. 276. The Magistrate is bound to summon the witnesses named by any claimant and to take due steps for securing their attendance.—*Sookhan Sahoo* v. *The Government of Bengal*, 18 W. R. Cr. 5.

Under this section, a confession as to the ownership of property which might be inadmissible to be used to establish an offence would apparently be admissible as an admission, under s. 18 of the Evidence Act, against the person who made it in his character of one setting up an interest in property the object of litigation or judicial inquiry and disposal. See *Emp.* v. *Tribhovan Manekchand*, I. L. R. 9 Bom. 131.—see p. 134, *per* WEST, J.: "Where there has been a trial and an order by the trying Court under s. 517 of the Criminal Procedure Code, that concludes the immediate right to possession. Where, as in this case, an order has to be made under s. 523, the Magistrate may in the inquiry proceed on such evidence as is available, and make an order for handing property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion."—*Ib.* See *Bullock* v. *Dunlop*, L. R. 2 Ex. Div. 43; *Dover* v. *Child*, L. R. 1 Ex. Div. 172.

Property seized by the Police as stolen property and ordered by the Magistrate to be forwarded to head-quarters is to remain in the custody of the Police until the Magistrate makes an order for the issue of a proclamation under s. 416 (corresponding with this section), when it should be transferred to the Nazir. If it is of great value, and consists of bullion, coin or jewels, it should be made over to the treasurer.—*Smyth*, p. 88.

Procedure where no claimant appears within six months.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency

Magistrate, District Magistrate or Subdivisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

This section corresponds with s. 417 of Act X of 1872, save as to the disposal of the proceeds, where the property has been sold, which is dealt with by the next section. See s. 244 of Act IV of 1877.

The procedure prescribed by this and the preceding sections must be followed before an order confiscating property can be made. See *Behary Shaha* v. *Nubby Khan*, 9 W. R. Cr. 13.

In the Punjab, all senior officers at head-quarter stations under the Magistrate of the District, who are Magistrates of the first class, were, under s. 417 of Act X of 1872, invested with power to sell suspicious or stolen property.—*Punjab Gazette*, 1873, p. 75. And again, Magistrates of the first class were empowered, subject to the general control of the Magistrates of the District, to sell suspicious or stolen property.—*Punjab Gazette*, 1878, Part I, p. 301.

As to Magistrates empowered in Madras, Bombay, and Oudh, see *Madras Gazette*, 1873, p. 717; *Bombay Gazette*, 1873, p. 16; *Oudh Gazette*, 1873, p. 3.

Where an order is made by a Magistrate, not duly empowered, for the sale of property under this section, and the order is made in good faith, the proceedings shall not be set aside merely on the ground that he was not duly empowered.—*Section* 529 (*h*), *infra*.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

An order made under this section by a Magistrate not duly empowered, but made *bonâ fide*, will not be set aside on the ground merely of his not being duly empowered.—*Section* 529 (*h*), *infra*.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or,

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses,

"or

"(*e*) that such an order is expedient for the ends of justice" [Act III of 1884, s. 11],

it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself,

"or

"(4) that an accused person be committed for trial to itself or to a Court of Session." [Act III of 1884, s. 11.]

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under this section.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

Compare s. 64 of Act X of 1872 and s. 147 of Act X of 1875. The former dealt only with trials and not appeals, appeals being provided for by s. 29 of the Letters Patent. See *Sitayathi* v. *Queen*, I. L. R. 6 Mad. 32.

The third clause as to the manner in which an application shall be made under this section follows the case of *Queen* v. *Zahiruddin*, I. L. R. 1 Cal. (F. B.) 219: (8 C.) 25 W. R. Cr. 27.

Subordinate Courts.—The High Court cannot, it was considered by BIRDWOOD, J., under s. 526 any more than under s. 25 of the Civil Procedure Code (Act XIV of 1882), direct the transfer of a case which is not properly before a subordinate Court of competent jurisdiction to receive and try it.—*Scott* v. *Ricketts*, I. L. R. 9 Mad. 356, following *Peary Lall Mozoomdar* v. *Komal Kishore Dunsia*, I. L. R. 6 Cal. 30. The case of *Emp.* v. *Thakir*, I. L. R. 8 Bom. 312, was distinguished.

Bangalore.—The District Magistrate and the Civil and Sessions Judge of the civil and military station of Bangalore are Magistrates subordinate to the High Court at Madras within the meaning of this section.—*Scott* v. *Ricketts*, I. L. R. 9 Mad. 356.

Aden.—Under s. 5 of the 'Scheduled Districts Act, XIV of 1874,' the Local Government cannot, by extending an Act which is of necessarily restricted application, make its provisions applicable to an entirely new subject matter, *viz.*, the litigation of a new local area.

Accordingly where the Government of Bombay issued the following Notification No. 823 of 1880:—'In exercise of the powers by s. 5 of the Scheduled Districts Act, XIV of 1874, the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to extend to the Island of Perim the whole of Act II of 1864 of the Governor-General in Council, with the exception of ss. 2, 17 and 23. The Governor in Council is further pleased, in exercise of the powers conferred by s. 6 of the "Scheduled Districts Act, XIV of 1874," and by any other Enactment, to direct that the Resident at Aden shall be Sessions Judge and Court of Session for the Island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island as are vested in him in Aden by the said Act.'

Perim.—It was held that the provisions of the Aden Act, II of 1864, which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim without enlarging the subject-matter of the Act, also that the appointment of the Political Resident at Aden as a Sessions Judge and Court of Session for the Island of Perim made under (*a*) of s. 6 of the 'Scheduled Districts Act, XIV of 1874,' was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification which regulates the exercise by the Resident of his powers with reference to Act II of 1864 should be treated as surplusage.—*Emp.* v. *Tekchand*, I. L. R. 10 Bom. 274.

A prisoner in that case, charged with having committed murder at Perim, was committed by the Magistrate there on the 26th August 1885 for trial before the Political Resident at Aden, by whom he was convicted and sentenced to death on the 14th September 1885. On the 29th January 1886, the High Court of Bombay reversed the conviction and sentence, on the ground that the Court of the Resident had no jurisdiction over the Island of Perim, and that the Resident not having been appointed a Judge of a Court of Session for that island, was not competent to try the prisoner. The High Court ordered a re-trial before a competent Court. On the 10th February 1886, the Government of Bombay issued the Notification (No. 823) above set forth. On the 11th March 1886, an application was made to the High Court of Bombay for the transfer of the case to another Court of Session or to the High Court for trial.

The High Court held also that Perim is a Sessions Division, and that after the establishment under the Code of Criminal Procedure of a Court of Session for the Perim Sessions Division and the appointment of the Resident at Aden as Sessions Judge of that Court, the accused stood properly committed to a Court of Session. The High Court, therefore, could transfer the case from that Court under s. 526 of the Code to any other Court of equal or superior jurisdiction, or to the High Court of Bombay.

JARDINE, J., considered that, after the High Court had annulled the proceedings in the Court of the Resident at Aden as without jurisdiction, the case could not be treated as still pending in his Court; and as there was no Court of Session in existence at the time of the commitment, it necessarily followed that the case remained in the Magistrate's Court. But whether the case was considered as pending in the Court of a Magistrate or of a Resident, or of a Sessions Judge, the High Court has the power to transfer it, and that under the circumstances the case should be transferred to the High Court for trial.

Hyderabad.—The High Court of Bombay having been vested by notification of the Governor-General of India in Council, No. 178 of 23rd September 1874 (see *Gazette of India*, 1874, p. 483, and notes to s. 458, *supra*), with original and appellate criminal jurisdiction over European British subjects, being Christians, resident, amongst other places, at Secunderabad, outside the Presidency of Bombay, and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad in his character of a District Magistrate is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within the contemplation of s. 526 of the Code of Criminal Procedure, Act X of 1882, as amended by Act III of 1884, s. 11, and the High Court possesses, by virtue of the appellate jurisdiction so vested in it, the power of transferring a criminal case pending in the Cantonment Magistrate's Court either to itself or to any Criminal Court of equal or superior jurisdiction.

Sonthal Pergunnahs:—The Court of a Magistrate in the Sonthal Pergunnahs is, as regards the trial of a European British subject, subordinate to the High Court, and the High Court has power under this section to direct the transfer of a case in which such subject is concerned.—*In re Wilson*, I. L. R. 18 Cal. 247.

Transfer:—It is only where there is reason to suppose that a prisoner will not have a fair trial, that the High Court will transfer a case from one magisterial officer to another (*Queen* v. *Kisto Chunder Ghose*, 2 W. R. Cr. 58); but before the transfer of a case from one Criminal Court to another can be made in cases in which the accused objects to the transfer, the prosecution must bring forward the very best evidence to prove that a fair trial cannot be had in the district in which the case is ordinarily triable.—*Emp.* v. *Nobogopal Bose*, I. L. R. 6 Cal. 491. If there are circumstances shown which may reasonably lead the petitioner to believe that the Magistrate has to some extent prejudged the case against him and will in consequence be prejudiced against him, there ought to be a transfer.—*In re Wilson*, I. L. R. 18 Cal. 247.

In the case of *Sitapathi* v. *Queen*, I. L. R. 6 Mad. 32, the Madras High Court, in considering whether it ought to exercise the powers given by s. 29 of the Letters Patent, acted upon the following considerations and directed an appeal to be transferred for disposal to the High Court: 'The public mind had for several months been in a state of abnormal excitement about the convicted prisoner; the most conflicting views had been entertained as to his conduct and character by various officials as was apparent from the reports published from time to time in the public journals; the prisoner was an old servant of Government who had been holding a very important post.' INNES, Offg. C. J., after setting out these considerations in his judgment, said: "The transfer is, we think, likely to lead to the quieting of the public mind and to be conducive to the interests of justice in that and other ways."

Where it appeared that the only officers in the district of P., otherwise competent to hear an appeal from a conviction for theft of property alleged to have belonged to the Road Cess Committee of the District, were, by reason of their connection with the Committee, interested in the result of the appeal, the High Court directed that the petition of appeal together with all papers connected therewith should be forwarded to the Sessions Judge of the 24 Pergunnahs to be dealt with as an appeal presented in his own Court.—*In re Dwarkanath Banerjee*, 6 C. L. R. 279. See *Wood* v. *Corporation of the Town of Calcutta*, I. L. R. 7 Cal. 322: 9 C. L. R. 193: and the cases cited there in argument. The mere circumstance that a trying Magistrate is the master of the complainant, does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate.—*In re Basapa*, 1. L. R. 9 Bom. 172.

The High Court will not exercise its power of transfer in a case of forgery or perjury, simply because the Judge who had tried the case has formed an opinion that the document has been forged or the alleged perjury committed (*Ex-parte Arunachella Reddi*, 5 Mad. H. C. R. 212); but when the transfer can be made without risk of any improper interference with the course of justice and without much inconvenience to the parties and witnesses, the transfer, it was said, would be proper not only as a fair concession to the accused, but as a means of relieving the Judge from a position which he would himself desire to avoid.

Burma:—The Special Court of British Burma has power to entertain an appeal from a sentence of death or other sentence passed by the Judicial Commissioner in a case transferred by him to his own Court from that of the Sessions Judge under the powers conferred by s. 64 of Act X of 1872 and s. 35 of Act XVII of 1875, the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner.—*Emp.* v. *Tait Oos*, I. L. R. 4 Cal. 667.

Act XI of 1889 (Lower Burma Courts Act), s. 16, enacts: "With reference to trials by the Judicial Commissioner in the exercise of the original criminal jurisdiction of a Court of Session under s. 31 of this Act or of a High Court under s. 526 of the Code of Criminal Procedure, 1882, or by the Recorder in exercise of the original jurisdiction of a Court of Session, and to sentences passed on such trials the Special Court shall, for the purposes of the said Code, be deemed a High Court."

An application to the High Court under this section must be made before the Court in its judicial capacity, supported by affidavits or information in the usual way. It should not be made by letter to the English Department of the High Court.—*Reg.* v. *Zahiruddin*, I. L. R. 1 Cal. (F. B.) 219: (S. C.) 25 W. R. Cr. 27. See *In re Abdul Sobhan*, I. L. R. 8 Cal. 63.

Act XI of 1870, s. 8 (which corresponds with s. 8 of Act XI of 1872, now repealed), extends to all British subjects. European or native, in Native States in alliance with Her Majesty, the law relating to offences and criminal procedure for the time being in British India. The Code of Criminal Procedure (Act X of 1882), with amendments introduced by Act III of 1884 and Act X of 1886, in thus, by virtue of that section, applicable to such British subjects, native or European.

In Bombay, the High Court by an order under this section transferred a case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad.—*Emp.* v. *Edwards*, I. L. R. 9 Bom. 333.

The following cases decided under s. 147 of Act X of 1875 may be, to some extent, useful as a guide in cases coming under this section, it being borne in mind that the provisions of the present section are wider than those of the corresponding section in Act X of 1875:—

In *In re Louis*, 15 B. L. R. Apx. 14, the High Court, in quashing a conviction, ordered a fine which had been imposed to be refunded; but in a subsequent case (*Queen* v. *Hadjee Jeehun Bux*, I. L. R. 1 Cal. 354), PONTIFEX, J., held that the Court had no power under s. 147 of Act X of 1875 to order a fine to be refunded.

It is in the discretion of the Court to order, on sufficient *primâ facie* cause shown, that a case be removed without notice to the Crown.—*Queen* v. *Upendronath Doss*, I. L. R. 1 Cal. 356. From this case it seems that where no specific decision has been given, the High Court, when the case has been removed under s. 147, may either try the case *de novo* or dismiss it, on the ground that the Magistrate has come to no specific finding on which the conviction can be sustained.

In a case transferred to the High Court under s. 147 of Act X of 1875, the Court had no power to give costs.—*In re Louis*, 15 B. L. R Apx. 14.

In *Malcolm* v. *Gasper*, I. L. R. 2 Cal. 278, where the Magistrate, after hearing the evidence for the prosecution under s. 141 of the Penal Code, decided that it did not amount to the offence charged, WHITE, J., held, that the case was not one which the Court could transfer under s. 147 of the High Courts' Criminal Procedure Act. In a subsequent case, MACPHERSON, J., ruled, that the powers of interference given to the High Court by s. 147 were not intended to be exercised in the case of an acquittal by a Magistrate, but only in the case of convictions or other orders whereby a defendant was aggrieved or injured. The section contemplated the transfer of a case before disposal.—*Corporation of Calcutta* v. *Bhseeuvram Napit*, I. L. R. 2 Cal. 290.

It is incumbent upon the Police Magistrates and all other Criminal Courts from which cases might be transferred to take notes of the evidence, so that in the event of the case being transferred, the Court might have before it the substance of the proceedings before the Magistrate.—*Per* PIGOT, J., *In re Louis*, 15 B. L. R. Apx. 14.

In the case of *Queen* v. *Hadjee Jeehun Bux*, I. L. R. 1 Cal. 354, the Court decided whether the case should be transferred under s. 147 on the notes of the evidence taken by the Magistrate at the trial.

Section 147 of Act X of 1875 was held to refer to a criminal proceeding, and not to a matter of a *quasi*-civil character.—*Reg.* v. *Ramdas Samaldas*, 12 Bom. H. C. R. 217.

The power of the High Court to issue a writ of *certiorari*, it was held, was not taken away by s. 147 of the High Courts' Criminal Procedure Act.—*Ibid.*

As to the extraordinary criminal jurisdiction of the High Court, see *Queen* v. *Ameer Khan*, 7 B. L. R. 240.

Where a Magistrate has not declined jurisdiction, but after hearing the evidence for the prosecution decided that it did not amount to the offence charged, the High Court, assuming that an error of law has been committed, has no power to issue a *mandamus* to the Magistrate to commit the defendant.—*Malcolm* v. *Gasper*, I. L. R. 2 Cal. 278.

The construction of s. 29 of the Letters Patent is, that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a Mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the Mofussil. 'Competent to investigate it' does not include competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and the punishment.—*Queen* v. *Nabadwip Goswami*, 1 B. L. R. O. Cr. 15.

The following rule is in force in Bombay:—

"In cases (not being appeals) transferred to the High Court for trial under s. 29 of the Letters Patent, or under s. 64 of the Criminal Procedure Code, 1872, the jurisdiction shall be exercised by one or more Judges as the Chief Justice shall direct. One of the Judges of the High Court shall, in communication with the Collector of Bombay, or such other officer as the Local Government may appoint, prepare the list of assessors contemplated by s. 400 of the said Code and determine upon objections made under s. 402 of the same to the said list. A copy of the revised list shall be signed by the Judge and the Collector, or such other officer as aforesaid, and sent to and recorded by the Clerk of the Crown. The precept contemplated by s. 407 of the said Code shall be sent to the Sheriff, who shall thereupon summon the persons specified thereon."—*Bombay Gazette*, 1874, p. 330.

As to practice and rules in Bengal, see judgment of FIELD and NORRIS, JJ., in the case of *Charoo Chunder Mullick*, I. L. R. 9 Cal. 397.

See s. 207, *supra*.

"526A. If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 314 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal." [Act III of 1884, s. 12.]

Adjournment on application under section 526

The words "shall exercise the powers of postponement or adjournment" are obligatory, and a refusal to grant an application under the section is illegal.—*Emp.* v. *Gayitri Prosunno Ghosal*, I. L. R. 15 Cal. 455.

527. The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice or tend to the general convenience of parties or witnesses.

Power of Governor-General in Council to transfer criminal cases and appeals.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

For the purposes of this section the Court of the Recorder of Rangoon shall be deemed a High Court.—Act XI of 1889, s. 48.

528. Any District Magistrate or Subdivisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

District or Subdivisional Magistrate may withdraw or refer cases.

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

Power to authorize District Magistrate to withdraw classes of cases.

"A Magistrate making an order under this section shall record in writing his reason for making the same." [Act III of 1884, s. 13.]

As to transfer of cases by Magistrates, see s. 192, *supra*.

Where a case has once been made over by a Magistrate to a Deputy Magistrate for trial, the Magistrate has no jurisdiction to do anything more in the matter so long as the transfer to the Deputy Magistrate is in existence. The Magistrate may withdraw the case under this section from the file of the Deputy Magistrate.—*Queen* v. *Bellilios*, 12 W. R. Cr. 53: (S. C.) 3 B. L. R. Apx. 151: see *Queen* v. *Grish Chunder Ghose*, 7 B. L. R 513.

In the case of *In the matter of Naba Kumar Bannerjee*, 5 B. L. R. Apx. 45: (S. C.) 14 W. R. Cr. 12, a Magistrate having made over a case for trial to the Deputy Magistrate, the latter, after hearing the evidence for the prosecution, recorded his opinion that the discrepancies were so glaring that it was impossible to sustain the charge against the accused. The Magistrate thereupon removed the case from the file of the Deputy Magistrate, but the High Court interfered and ordered it to be restored.

When a case under trial is removed under this section, the whole proceedings must commence *de novo*.—*Queen* v. *Khan Mahomed*, 24 W. R. Cr. 53.

Magistrates of Districts should exercise the powers conferred on them only when it is absolutely necessary for the interests of justice that they should do so, and when one of the parties to a case applies to have it withdrawn from the Magistrate inquiring into or trying it and referred to another Magistrate, the Magistrate of the District should give the other party notice of such application and an opportunity of showing cause why such application should not be granted. *In re*

Unrao Singh, I. L. R. 3 All. 749 . see also *Teacotta Shekdar* v. *Ameer Majee*, 10 C L. R. 230 ; (S. C.) I. L. R. 8 Cal. 363.

The provisions of this section are wide enough to empower a District Magistrate to withdraw a case falling under s. 107, *supra*.—*In re Dinendro Nath Shanial*, I. L. R. 8 Cal. 851.

A Magistrate who is subordinate to a Subdivisional Magistrate is also subordinate to the District Magistrate within the meaning of the section.—*Thaman Chetti* v. *Alagiri Chetti*, I. L. R. 11 Mad. 399.

Magistrates of Districts in the Punjab have been invested with power to withdraw classes of cases from the Magistrates subordinate to them.—*Punjab Gazette*, 1873, p. 75.

In Burma, all Magistrates of Districts are authorized to withdraw from the Magistrates respectively subordinate to them, whether in charge of divisions of districts or not, such classes of cases as they think proper.—*Burma Gazette*, 1873, Part II, p. 5.

All Magistrates of Districts in the North Western Provinces are invested with authority to withdraw from the Magistrates, subordinate to them, whether in charge of divisions of districts or not, such classes of cases as they may think proper.—*N.-P. W. Gazette*, 1873, p. 3.

In Bengal, all Magistrates of Districts were authorized to withdraw from any of their subordinate Magistrates such classes of cases as they might think proper so to withdraw.—*Calcutta Gazette*, 1873, Part I, p. 67.

If any Magistrate not empowered in that behalf erroneously, but *bonâ fide*, withdraws a case and tries it himself under this section, his proceedings shall not be set aside merely on the ground of his not being so empowered.—*S.* 529 (*i*), *infra*.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Where a trial improperly originated has properly resulted in a conviction, the High Court has power to set aside the conviction without reference to the Local Government.—*In re Nobin Chandra Banikya*, I. L. R. 8 Cal. 560, *per* MAULEAN, J. See note to s. 339, *supra*.

Irregularities which do not vitiate proceedings

529. If any Magistrate not empowered by law to do any of the following things, namely :—

(*a*) to issue a search-warrant, under section 98 ;

(*b*) to order, under section 155, the Police to investigate an offence ;

(*c*) to hold an inquest under section 176 ;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;

(*e*) to take cognizance of an offence under section 191, clause (*a*) or clause (*b*) ;

(*f*) to transfer a case under section 192 ;

(*g*) to tender a pardon under section 337 or section 338 ;

(*h*) to sell property under section 524 or section 525 ; or

(*i*) to withdraw a case and try it himself under section 528 ;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

This section corresponds with s. 32 of Act X of 1872.

Under s. 34, cl. 9, of that Act, an order selling property under the section corresponding with ss. 524 and 525 of this Act was void, if the Magistrate were not duly empowered in that behalf. Now, under cl. (*h*) of this section, such an order is not void by reason merely of the Magistrate not being duly empowered, provided he acts in good faith.

Clause (*g*) as to tender of pardon is new. See *In re Nobin Chandra Banikya*, I. L. R. 8 Cal. 560.

Schedules III and IV give the ordinary powers of Magistrates and the additional powers with which they may be invested.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely :—

(*a*) attaches and sells property under section 88 ;

(*b*) issues a search-warrant for a letter in the Post Office or a telegram in the Telegraph Department ;

(*c*) demands security to keep the peace ;

(*d*) demands security for good behaviour ;

(*e*) discharges a person lawfully bound to be of good behaviour ;

(*f*) cancels a bond to keep the peace ;

(*g*) makes an order under section 133 as to a local nuisance ;

(*h*) prohibits under section 143 the repetition or continuance of a public nuisance ;

(*i*) issues an order under section 144 ;

(*j*) makes an order under Chapter XII ;

(*k*) takes cognizance under section 191, clause (*c*), of an offence ;

(*l*) passes a sentence under section 349, on proceedings recorded by another Magistrate ;

(*m*) calls under section 435, for proceedings ;

(*n*) makes an order for maintenance ;

(*o*) revises under section 515, an order passed under section 514 ;

(*p*) tries an offender ;

(*q*) tries an offender summarily ; or

(*r*) decides an appeal ;

his proceedings shall be void.

A prisoner was committed to the Court of Session for trial in December 1872, and the record was sent to the Deputy Commissioner under Act X of 1872, which came into force on the 1st of January 1873 ; the Deputy Commissioner was no longer a Court of Session, but received powers under s. 30 to try as a Magistrate classes of cases which formerly he would have tried as a Court of Session. The Deputy Commissioner took up the case afresh as a Magistrate of the District. It was held that this was illegal, and that he was bound to have sent the commitment on to the proper Court, and had no power, a trial being in progress, to commence a new inquiry in the same matter against the prisoner.—*The Queen* v. *Poorun*, 5 All. 219.

In the case of an offence tried by a Court without jurisdiction, the order of a Magistrate being void under this section, the offender, if acquitted, is liable to be re-tried under s. 403, and it is not necessary for the High Court to upset the acquittal before the re-trial can be had.—*Emp.* v. *Hussin Gaibu*, I. L. R. 8 Bom. 307. See *Emp.* v. *Gundya*, I. L. R. 13 Bom. 502. So where a commitment was made without jurisdiction, the Calcutta High Court treated the commitment as void and considered it to be unnecessary that a reference should be made to have it set aside.—*Emp.* v. *Alim Mundle*, 11 C. L. R. 55. See *Queen* v. *Unnath Bundhoo Banerjee*, 21 W. R. Cr. 37.

Splitting Offences.—Where, on the facts found by a Magistrate, an offence is established which he cannot try summarily, he is not competent to convict for an offence made up of some only of those facts in order to give himself jurisdiction.—*In re Chunder Seekur Sookul*, 1 C. L. R. 434 : *Emp.* v. *Abdul Karim*, I. L. R. 4 Cal. 18 : (S. C.) *In re Abdul Kadir*, 3 C. L. R. 44. See *Emp.* v. *Gundya*, I. L. R. 13 Bom. 502.

As to powers of Magistrate, see Scheds. III and IV, *post*.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Subdivision, or other local area, unless it appears that such error occasioned a failure of justice.

The section will now meet the difficulty which was felt in the case of *Piran Ayah*, 13 B. L. R. Apx. 4 : (S. C.) 21 W. R. Cr. 66, where it was held that s. 70 of Act X of 1872 did not apply where there was an error of jurisdiction from a case being tried in a wrong province. It refers only to districts, divisions, sub-divisions, and local areas governed by this Code.—*In re Bitchitranund Dass*, I. L. R. 16 Cal. 667, and not to the Tributary Mehals like Kheonjur.—*Ibid*, or Moharbunj, to which the Code does not apply.—*Emp.* v. *Keshab Mohajan*, I. L. R. 8 Cal. 985.

The High Court declined to interfere, under s. 70 of Act X of 1872, with an order in a case under s. 530 of that Act, in which the objection as to jurisdiction was not seriously taken in the Court below, and in which the petitioner failed in his application to the High Court to show that he had been in any way prejudiced.—*Sonatun Dass* v. *Gooroo Churn Dewan*, 21 W. R. Cr. 88.

An order of a Magistrate committing a case to the Court of Session is an order of a Criminal Court within the meaning of this section. If such an order, contrary to the requirements of s. 177, *supra*, directs the commitment to be made to the Court of Session which has no territorial jurisdiction, it is not to be set aside, unless it appears that the error occasioned a failure of justice.—*Emp.* v. *Thaku*, I. L. R. 8 Bom. 312 : *Emp.* v. *Ingle*, I. L. R. 16 Bom. 200. In the case of *Emp.* v. *Alim Mundle*, 11 C. L. R. 55, a Magistrate who had no jurisdiction made a commitment and the commitment was held to be void. See *Queen* v. *Unnath Bundhoo Banerjee*, 21 W. R. Cr. 37. See *Emp.* v. *Keshub Mohajan*, I. L. R. 8 Cal. (F. B.), 985 : *Act XXI of* 1879, *s.* 9, and *Bapu Dasdi* v. *Queen*, I. L. R. 5 Mad. 23. See s. 54, *supra*.

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

When irregular commitments may be validated.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

The High Court will not quash a commitment on the ground of want of jurisdiction, unless a failure of justice would be caused by proceeding with the trial.—*Emp.* v. *Ingle*, I. L. R. 16 Bom. 200.

A commitment once made under s. 214 or 215 by a competent Magistrate can be quashed by the High Court only, and only on a point of law (s. 215, *supra*). As to what Magistrates are competent to commit, see s. 206, *supra*.

Section 33, the corresponding section of Act X of 1872, it was held, contemplated the contingency of a case, which had been inquired into at the proper place, as indicated by s. 63 of that Act, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment, and not of a case which had been inquired into a district in which it was not committed, being committed to the proper Court of Session, as indicated by that section, by a particular Magistrate duly empowered by law to make such a commitment. Consequently, where a Magistrate inquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such commitment, because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings are illegal *ab initio*.—*Emp.* v. *Jagan Nath*, I. L. R. 3 All. 258. See *Emp.* v. *Alim Mundle*, 11 C. L. R. 55. See also *Emp.* v. *Mangal Tekchand*, I. L. R. 10 Bom. 274.

In the case of *Emp.* v. *Morton*, I. L. R. 9 Bom. 288, after a magisterial inquiry, a European British subject who was a public servant within the meaning of s. 197, *supra*, was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in the Nizam's territories, without any previous sanction as required by that section. It was held by a Full Bench that the provisions of the Code of Criminal Procedure applied to the Courts of the Judicial Superintendent of Railways in the Nizam's dominions held at Secunderabad, that the proceedings were irregular and without jurisdiction, and that a sanction subsequently obtained was of no effect, but that the Judge presiding at the Criminal Sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. The Punjab Court, however, has refused to follow the Bombay Court.—*Shamull Khan*, Punj. Rec., 1890. p. 33. See note to s. 458, *supra*.

Where a commitment was made by a Sessions Judge under s. 472 of Act X of 1872 in a case in which he had no power to make such commitment, the High Court set it aside as made without jurisdiction. —*Queen* v. *Unnath Bundhoo Banerjee*, 21 W. R. Cr. 37. See *Emp.* v. *Alim Mundle*, 11 C. L. R. 55.

Where a Magistrate, on perusal of the depositions, committed a person charged with perjury in a trial without examining the witnesses for the prosecution, the commitment was held to be bad on the ground of prejudice to the accused.—*Queen* v. *Chinna Vedagiri Chetti*, I. L. R. 4 Mad. 227.

In *In re Khamir*, I. L. R. 7 Cal. 662: (S. C). 10 C. L. R. 8, the High Court, on appeal, refused to set aside a conviction on an improper commitment on the ground that there had not been any actual failure of justice, though there had been grave irregularities which, if brought to the notice of the High Court before the trial, would have justified the commitment being quashed. See *In re Sagambar*, 12 C. L. R. 120.

Under s. 5 of the 'Scheduled Districts Act, XIV of 1874,' the Local Government cannot, by extending an Act which is of necessarily restricted application, make its provisions applicable to an entirely new subject-matter, *viz.*, the litigation of a new local area.

Accordingly where the Government of Bombay issued the following Notification No. 823 of 1886:—'In exercise of the powers conferred by s. 5 of the "Scheduled Districts Act, XIV of 1874," the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to extend to the Island of Perim the whole of Act II of 1864 of the Governor-General in Council, with the exception of ss. 2, 17, and 23. The Governor in Council is further pleased, in exercise of the powers conferred by s. 6 of the "Scheduled Districts Act, XIV of 1874," and by any other Enactment, to direct that the Resident at Aden shall be Sessions Judge and Court of Session for the Island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island as are vested in him in Aden by the said Act.'

It was held, that the provisions of the Aden Act, II of 1864, which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim without enlarging the subject-matter of the Act, and also that the appointment of the Political Resident at Aden as a Sessions Judge and Court of Session for the Island of Perim, made under cl. (*a*) of 6 of the 'Scheduled Districts Act, XIV of 1874,' was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification, which regulates the exercise by

In the case of *Bhootnath Dey*, 4 C. L. R. 405, in a trial by jury before a Court of Sessions upon charges, some of which were triable by a jury and some with the aid of assessors, the jury by a majority of four to one returned a verdict of 'not guilty' on all the charges. The Judge disagreed with the jury, and directed that the accused should be kept in custody pending a reference to the High Court. Subsequently, the Judge called upon the pleaders of the accused to show cause why the accused should not be punished, the trial being treated as having been held with the aid of assessors. No cause having been shown, the Judge recorded his judgment, treating the trial as a trial with the aid of assessors, and concurring with the juror constituting the minority, he sentenced them to various periods of imprisonment. It was held, that the Judge was not competent to treat the trial as a trial with the aid of assessors and to act as he had done.

See Chap. XXIII.

Finding or sentence when reversible by reason of omission in charge or other proceeding.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

Upper Burma:—In Upper Burma (excepting the Shan States) notwithstanding anything in the Code, a finding, sentence or order shall not be reversed or altered on appeal or revision on account of any irregularity of procedure unless it has occasioned a failure of justice.—Reg. V. of 1892, Sched. (XV.)

Sonthal Perpunnahs:—See Reg. V of 1893, s. 4 (V).

As to what is a Court of competent jurisdiction see, *Emp.* v. *Krishna Bhat*, I. L. R. 10 Bom. 320.

Failure of Justice.—As to what constitutes a failure of justice, reference may be made to the remarks of West, J., in the case of *Reg.* v. *Deva Dayal*, 11 Bom. H. C. R. 237, p. 238, in discussing the meaning of the word 'prejudiced' in s. 346 of Act X of 1872. "We are of opinion," he said, "that the meaning of the word 'prejudiced' in this section is unfairly affected as to his defence on the merits. The intention of the whole paragraph in which the word occurs is to remedy defects of a formal character which may have arisen from inadvertence or neglect on the part of the Magistrate, and which defects the law and the Legislature think ought not to be made the means of culprits escaping the just penalties of his crime." As to what may amount to prejudice, see *Emp.* v. *Anant Ram*, I. L. R. 4 All. 233: *Emp.* v. *Niaz Ali*, I. L. R. 5 All. 17: *Emp.* v. *Ramji Sajabarao*, I. L. R. 10 Bom. 124.

The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that the complaint should be referred to another Magistrate.—*In re Basapa*, I. L. R. 9 Bom. 172: see *Wood* v. *Corporation of the Town of Calcutta*, I. L. R. 7 Cal. 322: *Dimes* v. *Proprietors of the Grand Junction Canal*, 3 H. L. Cas., p. 793.

Where the defence has been heard by a Court sitting with assessors, it is an irregularity for the Court to acquit without having asked the opinion of the assessors. In such a case, however, the High Court refused to interfere.—*In re Narain Das*, I. L. R. 1 All. 610.

Where a prisoner was represented in the Court of Session by a pleader who had an opportunity to object to the admissibility of his statement and did not, the High Court held, that he was not prejudiced.—*Reg.* v. *Deva Dayal*, 11 Bom. H. C. R. 237.

Where evidence was recorded after the discharge of the assessors in a case tried with the aid of assessors, it was held that this was an irregularity not cured by s. 537.—*Emp.* v. *Ram Lall*, I. L. R. 15 All. 136.

The following cases may be referred to under this section:—

In the case of *Buchu Mullah* v. *Sia Ram Singh*, I. L. R. 14 Cal. 358, where there were counter charges of rioting and assault the Magistrate took up and tried one of the cases, and having heard the evidence for the prosecution called on the counter-case and in the latter case examined as witnesses one of the accused in the first case, eventually convicting the accused in the first case. It was held that such a procedure was a grave irregularity, but that under the circumstances of the particular case the irregularity was cured by s. 537. See notes to ss. 213 and 239, *supra*. See *Emp.* v. *Kutti*, I. L. R. 11 Mad. 441. At the trial of a number of Hindus for rioting the Magistrate, instead of examining the witnesses for the prosecution, caused to be produced copies of the examination in chief of the same witnesses which had been recorded at a previous trial of a party of Mahomedans who were opposed to the Hindus in the same riot. These copies were read out to the witnesses, who were then cross-examined by the prisoners, no objection being taken to the procedure. The accused were convicted, and it was held that although the procedure was irregular the irregularity was cured by s. 537 of the Code and s. 167 of the Evidence Act, as it was not shown that there had been any failure of justice.—*Emp.* v. *Nand Ram*, I. L. R. 9 All. 609.

Where a Magistrate dismissed a complaint of criminal breach of trust without examining the complainant on oath under s. 203 of the Code, but after the complainant had sworn to the truth of the matters alleged in the complaint it was held that the irregularity was covered by the terms of s. 537.—*Emp.* v. *Murphy*, I. L. R. 9 All. 666.

Where a Court under s. 289 records a finding of not guilty where there is evidence, but evidence which it considers unsatisfactory and untrustworthy, it acts without jurisdiction and its order dis charging the accused is illegal and amounts to a serious irregularity which, it was said, may, or perhaps must have caused a failure of justice within the meaning of s. 537.—*Emp.* v. *Munnu Lal*, I. L. R. 10 All. 414.

Where five persons were charged with rioting on the 5th December, and four of these persons and one F were charged with criminal trespass on the 8th December, and the two cases were taken up and tried together, it was held that the trial was absolutely illegal and that the defect was not cured by s. 537.—*Emp.* v. *Chandi Singh*, I. L. R. 14 Cal. 395.

Where four accused persons were at one and the same time tried for the offences of murder and robbery committed in the course of one transaction and for another robbery committed two or three hours previously and at a place close to the scene of the murder, it was held that the trial of these separate offences was an irregularity which did not necessarily render the whole trial void.—*Emp.* v. *Mulua*, I. L. R. 14 All. 502.

Where a Magistrate in whose presence contempt was committed took cognisance of the offence immediately, but in order to give the accused an opportunity of showing cause postponed the final order for some days, it was held that his action though it might be irregular was not illegal and was covered under the circumstances by s. 537.—*Emp.* v. *Piambar Buksh*, I. L. R. 11 All. 361. If a person be tried for four specific offences at one trial in contravention of s. 234, *supra*, it seems it would not be merely an irregularity which is cured under s. 537, but a defect in the trial which would render the whole trial inoperative. See *In re Luchminarain*, I. L. R. 14 Cal. 128, *per* PETHERAM, C. J., p. 131

This section deals with the want of sanction necessary under s. 195 only. It does not touch the cases where prosecutions may have been instituted against public servants without the sanction required by ss. 132 and 197. See *Emp.* v. *Morton*, I. L. R. 9 Bom. (F. B.) 288 *Sharina* v. *Emp.*, Punj. Rec., 1884, p. 92 *Shumal Khan*, Punj. Rec., 1890, p. 33.

It may be useful in dealing with cases under this section to bear in mind the rule laid down by WHITE, J., in the case of *Protap Chunder Mookerjee* v. *Emp.*, 11 C. L. R. 25, with reference to the trial of criminal cases on appeal. The sound rule, he said, in trying a criminal appeal where questions of fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. In the latter case the Court must be convinced, before reversing a finding of fact of a lower Court, that the finding is wrong. But see remarks of OLDFIELD, J., in case of *Emp.* v. *Sajiwan Lal*, I. L. R. 5 All. 386.

The section deals with the findings, sentences or orders passed by a Court of *competent* jurisdiction. As to proceedings tried by a Court without jurisdiction, see ss. 530–532, *supra*.

Upon a single charge of wrongful confinement, the accused raised a defence justifying the confinement, on the ground that the persons confined had been caught under circumstances which led to the belief that they had committed housebreaking by night with intent to commit theft, and the Magistrate, disbelieving the defence, committed the accused to the Sessions, not only for wrongful confinement, but for fabricating false evidence and bringing a false charge. It was held, that by adding the additional charges, the Magistrate had really prejudged the defence on the first charge, and a conviction made by the Sessions Court was therefore set aside by the High Court.—*In re Turibullah*, 4 C. L. R. 338.

An omission to draw up a charge by a Deputy Magistrate is not such a defect as to justify the reversal of a sentence, if the Magistrate has given the accused clearly to understand the nature of the charge against him.—*Bhugwan* v. *Doyal Gope*, 19 W. R. Cr. 7. See *Emp.* v. *Appa Subhana Menetre*, I. L. R. 8 Bom. 200

The absence of a certificate required under s. 188, *supra*, is not a fatal defect.—*Shamir Khan*, Punj Rec., 1888, p. 85.

As to irregularities in the matter of the charge, this section must be read with ss. 232 and 535, *supra*.

As to the meaning of the word "charge," see note to s. 226, *supra*.

In the case of *Kally Mohun Mookerjee*, 13 C. L. R. 117, the Court refused on revision to set the conviction aside, the only ground being want of sanction under s. 195, *supra*, there being nothing to show that there had been a failure of justice.

Where a commitment of a person discharged by a Deputy Magistrate had been wrongly ordered by a Sessions Judge under s. 296 of Act X of 1872, but no actual failure of justice had been caused by the error of the Judge, it was held, that s. 283 of that Act (s. 537 of this Code) would be a bar to the reversal of his judgment.—*In re Khamir*, I. L. R. 7 Cal. 602 (S. C.) 10 C. L. R. 8. See *In re Girdhari Mondul*, 10 C. L. R. 46 (S. C.) I. L. R. 8 Cal. 435.

Where a Magistrate trying an offence rejected an application that a certain person might be examined on his behalf either in Court or by commission without recording his reasons for refusing to summon such person as required by s. 362 (of Act X of 1872) [s 257 *supra*], the conviction of the accused person was set aside.—*In re Sat Narain Singh*, I. L. R. 3 All. 392. See *Nilkanta Sing* v. *Emp.*, I. L. R. 20 Cal. 469.

Section 167 of the Evidence Act provides The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Misreception of evidence, it has been held, is a defect or irregularity within the meaning of this section.—*Queen* v. *Behares Dosadh*, 7 W. R. Cr. 7. See s. 167 of the Evidence Act.

Whenever a prisoner is put upon his trial, he is entitled to have the witnesses examined *de novo* if they have previously given evidence on the trial of another prisoner in the same case; and it is not sufficient to require the witnesses to identify the prisoner and to read over to them their former examination and require them to attest it.—*Queen* v. *Kanye Shaikh*, W. R. Sup. Vol. 38.

In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new and the witnesses had not been examined before.—*Queen* v. *Shaik Kyamut*, W. R. Cr. Sup. Vol. 1.

But when the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court declined to interfere, as the irregularity of procedure was one by which the prisoners were not prejudiced.—*Purmessur Singh* v. *Soroop Authikaree*, 13 W. R. Cr. 40.

The error of a Deputy Magistrate in proceeding by warrant instead of by summons furnishes no ground for quashing his proceedings.—*Aseef Putney* v. *Ramsoonder Chuckerbutty*, 1 W. R. Cr. 16.

It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not a witness to contradict any new case set up by the prisoner. Where, however, the prisoner had full notice of the evidence which was to be given by such witness and made his defence, alluding to the evidence the witness was likely to give, the Court refused to set aside the conviction, considering that the irregularity of putting the prisoner on his defence, before the witness was examined, could not be said to have caused a failure of justice.—*Queen* v. *Sham Kishore Holder*, 13 W. R. Cr. 36.

A conviction under s. 41 of the Excise Act without any complaint as required by s. 47 of that Act was held to be bad, the absence of the complaint not being a mere irregularity. —*Kirpal Singh* v. *Emp.*, Punj. Rec., 1883, p. 74.

Where in a summary case a Bench of Magistrates, after recording the evidence for the prosecution, postponed the hearing of evidence for the defence, and on the day fixed for hearing, another Bench of Magistrates, none of whom had been members of the former Bench, recorded the evidence for the defence, and acquitted the accused, the High Court on a reference set aside the order as being irregularly made.—*Ram Sunder De* v. *Rajab Ali*, I. L. R. 12 Cal. 558. See *Sufferuddin* v. *Ibrahim*, I. L. R. 3 Cal. 754: (S. C.) 2 C. L. R. 263; and *Tarada Buladu* v. *Reg.*, I. L. R. 3 Mad. 112.

In the case of *Shumbhu Nath Sarkar* v. *Ram Kamal Guha*, 13 C. L. R. 212, in a trial before a Bench originally constituted by a Stipendiary and two Honorary Magistrates, one of the latter, after the commencement of the trial, was absent, and important evidence was recorded in his absence. On the following day he returned to the Bench and signed the final order convicting the accused. The High Court set aside the conviction as bad on the ground of irregularity.

Where a Magistrate pronounced judgment upon evidence taken by, and the notes of, his predecessor, who had died after taking the evidence in the case and leaving notes for a judgment and of the punishment to be awarded, it was held, that the fact that the Magistrate did not have the accused brought up before him was an irregularity covered by this section. —*Kesra Ram* v. *Emp.*, Punj. Rec., 1884, p. 7.

In the case of *Jhubboo Mahton*, I. L. R. 8 Cal. 730, irregularity not in the revision of the list of jurors, but in the selection of jurors, the Judge having selected them instead of choosing them by lot, was treated as an objection covered by the corresponding section of the old Code.

Where three prisoners, one of whom was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of the pleader, the conviction was set aside on the ground that the prisoners ought to have been tried separately, and that they had been prejudiced by being tried together, and so being deprived of the evidence of each other in defence.—*Kotha Subbo Chetti*, I. L. R. 6 Mad. 252.

The omission by a Magistrate to hold a preliminary inquiry on a charge under s. 307 of the Indian Penal Code is an irregularity, and if the accused be prejudiced thereby, the proceedings should be quashed and a new trial held.—*Queen* v. *Mussamut Ituarya*, 14 B. L. R. 54: (S. C.) 22 W. R. Cr. 14.

Where a prisoner was charged under the Penal Code with an offence committed before the Penal Code came into operation, it was held, that this was not such an error of procedure as to vitiate the conviction so long as the punishment awarded did not exceed the legal penalty for the offence before the Penal Code became law.—*In re Mohabeer Singh*, 15 W. R. Cr. 43. So in another case, where a Magistrate convicted under certain repealed sections of a law, the High Court refused to set aside the conviction, as the conviction and sentence might have been passed under the Penal Code, and no substantial injury had been done to the accused.—*Rughoonath Dass* v. *Chuckerdhun Raut*, 15 W. R. Cr. 49.

Where a prisoner originally charged with murder and acquitted, was committed on the day following for trial for attempting to murder, without any witnesses being examined on the second charge, and without having had any opportunity of cross-examining the witnesses on the first charge, with respect to the second charge, it was held, that the irregularity was one which was not covered by this section, and that the prisoner had been prejudiced thereby in her defence, and the order directing a trial on the second charge was quashed and a new trial directed.—*Reg.* v. *Mussamut Ituarya*, 14 B. L. R. 54: (S. C.) 22 W. R. Cr. 14.

Where a person summoned to answer to a charge of criminal trespass appeared and filed a written statement, and the Magistrate proceeded accordingly without recording a proceeding under s. 530 [s. 145] of the Code (Act X of 1872), it was held, that the irregularity was covered by s. 298 of the same Code, the rule therein laid down being intended to extend to all proceedings before Magistrates. *Gour Mohun Majee* v. *Doolubh Majee*, 22 W. R. Cr. 81. But see *In re Sheikh Mungto*, 25 W. R. 76, and *Samodur Bidyadhur Mohopatro* v. *Syamanund Dey*, I. L. R. 7 Cal. 385.

Without the consent of parties, and in absence of urgent necessity, no civil or criminal trial should proceed on a Sunday or gazetted holiday.—*H. C. C. O., No. 5 of* 1880, *Calcutta Gazette*, 1873, p. 69 *Assam Gazette* 1880, p. 71; *Wilkins*, p. 141. The Lord's Day Act, 29 Car. II, c.7, was repealed in India by Sched. IA of the Code of Civil Procedure (Act X of 1877), so that, apparently, Sunday is no longer a *dies non* in India. See *Queen* v. *Hurgobind*, 8 B. L. R. Appx. 12.

During the Dusserah and Mohurrum vacations, Courts of Session must never be closed for the despatch of criminal business, except on those days only when a total cessation from all business is necessary and usual.—*C. O*, *No.* 8, *of 23rd March* 1838.

The holidays published by the High Court under s. 17, Act VI of 1871, are for observance in the Civil Courts only; the Criminal Courts, as a rule, should not be closed on days when the public treasuries are open. In any case, a trial commenced ought to be finished, although a native holiday intervenes; and Sessions ought not to be interrupted, and the commencement of trials postponed, except on days when native usage absolutely requires the intermission of all business.—*C. O., No.* 1, *of 28th February* 1876; *Wilkins*, p. 141.

As regards Mahomedan holidays, see the instructions conveyed in G. L. No. 1, of 5th January 1883. As regards members of the Brahmo Somaj, see G. L. No. 7, of 23rd August 1883.—*Ib.*

Distress not illegal, nor distrainer a trespasser for defect or want of form in proceedings.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

CHAPTER XLVI.

MISCELLANEOUS.

Courts and persons before whom affidavits may be sworn

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Act X of 1875, s. 140. This section applies to High Courts only.

Power to summon material witness or examine person present.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it essential to the just decision of the case.

The section does not empower a Sessions Court to summon witnesses after the trial has been concluded so far that no witnesses remain to be examined and the assessors have given their opinion.—*Awal Khan*, Punj. Rec., 1892, p. 9.

See as to process for production of evidence, s. 208, *ante*, and as to the power of a Magistrate to summon supplementary witnesses in Sessions cases, s. 219, *ante*.

Under s. 291 an accused in the Sessions Court is allowed to examine any witnesses not previously named by him if they are in attendance, but except as provided in ss. 211 and 231 he is not entitled *as of right* to have any witness other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial. Under this section (540) the Sessions Court has power to summon any person as a witness, if his evidence appears to be essential to the just decision of the case. See *Emp.* v. *Ishri*, I. L. R. 8 All. 668.

Section 540 does not authorize the examination of the accused—*Emp.* v. *Subbayya*, I. L. R. 12 Mad. 451.

A Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness or of the parties, about any fact relevant or irrelevant, and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question—*Act I of 1872, s.* 165. Under that section of the Evidence Act, a Judge has power to ask irrelevant questions of a witness, if he does so, in order to obtain proof of relevant facts; but if he asks such question with a view to criminal proceedings against the witness, the witness is not bound to answer, and he cannot be punished for not answering. *Emp.* v. *Hari Lakshman*, I. L. R. Bom. 01 185. The Court, however, ought not to refuse to allow the cross-examination of a witness called by it.—*Emp.* v. *Grish Chunder Talukdar*, I. L. R. 5 Cal. 614: (S. C.) 5 C. L. R. 304.

Tendering Witnesses for Cross-examination.—Witnesses summoned on behalf of the prosecution in Sessions Courts and not called ought, it was said, to be tendered for cross-examination by the other side.—*Ibid.* But see *Emp.* v. *Stanton*, I. L. R. 14 All. 521: and *Emp.* v. *Bunkhandi*, I. L. R. 15 All. 6. This has been the practice in Sessions Courts and High Courts; but neither in Indian or in England is the prosecution bound to tender at the Sessions witnesses summoned on behalf of the prosecution or called before the committing Magistrate.—*Emp.* v. *Knight* (unreported, July 1888), *per* O'KINEALY, J. The prosecution is not bound to tender for cross-examination all the witnesses called before the committing Magistrate; nor ought a Court under s. 540 to call a witness summoned but not produced by the prosecution, if it could not rely upon his evidence.—*Emp.* v. *Kali Prosunno Doss*, I. L. R. 14 Cal. 245. See *Emp.* v. *Dhunnoo Kazi*, I. L. R. 8 Cal. 121 and notes to ss. 286, 289 and 492.

With regard to witnesses called before the committing Magistrate and not intended to be called by the prosecution in the Sessions Court it was said in Allahabad that all that the prosecution is bound to do is to have them present at the trial so as to give the Court or the pleader for the defence, as the case may be, an opportunity of examining them.—*Emp.* v. *Stanton*, I. L. R. 14 All. 521.

In acting under s. 165 of the Evidence Act, a Judge or Magistrate would do well to bear in mind the remarks made by the Court (GARTH, C. J., and MACLEAN, J., in the case of *Noor Bux Kazi*, 7 C. L. R. 385: (S.C.) I. L. R. 6 Cal. 270: "We find," the Court said, "that, on examination in chief being finished, the Judge questioned almost all the witnesses at considerable length upon the very points to which he must have known that the cross-examination would certainly and properly be directed.

The result of this, of course, was to render the cross-examination by the prisoner's pleader to a extent ineffective, by assisting the witnesses to explain away in anticipation the points which might have afforded proper ground for useful cross-examination. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions, and the Court should, as a general rule, leave the witness to the pleaders to be dealt with as laid down in s. 138 of the Evidence Act. The Judge's power to put questions under s. 165 is certainly not intended to be used in the manner which we have had occasion to notice in the present case." See *Chatu*, Punj. Rec., 1896, p. 19.

It is entirely within the discretion of a Magistrate conducting a trial in a warrant-case to admit evidence on behalf of either side at any stage of the trial, but the Magistrate, in exercising the discretion conferred on him by this section, ought to have good reason for allowing witnesses on the part of the prosecution to be interposed in the midst of the case of the accused.—*Queen* v. *Kasey Singh*, 21 W. R. Cr. 61.

The High Court, as a Court of Revision, cannot say that a Sessions Judge is wrong in point of law, because he does not, in the exercise of his discretion, postpone a case for the evidence of a witness.—*Queen* v. *Radhu Jana*, 12 W. R. Cr. 44. Under s. 344, *supra*, the Court has power to postpone or adjourn proceedings, if from the absence of a witness or any other reasonable cause it considered it advisable. See *Emp.* v. *Sagambar*, 12 C. L. R. 120.

A person who has been suspected and charged with an offence, but discharged for want of evidence, may be afterwards admitted as a witness for the prosecution.—*Queen* v. *Behary Lall Bose*, 7 W. R. Cr. 44.

In forwarding an application or summons for the attendance of a witness residing in a Native State, care should be taken to give such a description of him that he may be easily identified. Thus, for instance, besides the person's name and father's name, the requisition should indicate his age, caste, and village, and it should be mentioned if his village is in the neighbourhood of any well-known town. The probable time during which the witness will be detained should also be stated, and in fixing the date, when the appearance of a witness is required, reasonable time should be given, so as to allow of his being found and sent off. When practicable, the batta allowed by Government Orders for the expenses of witnesses should be transmitted at the time of sending the requisition.—*Bom. H. C. Cir.* 41.

Power to appoint place of imprisonment.

541. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

In Bengal, the following jails have been appointed as places in which European British subjects may be confined:—The Presidency Jail, Hazareebagh Penitentiary, the jails at Bhaugulpore,

Midnapore, Rajshahye, Cachar, Dacca, Darjeeling, Chittagong, Cuttack, Tezpore, and Patna, and the lock-up at Dinapore.—*Calcutta Gazette*, 1873, Part I, pp. 68, 787.

By a notification dated 20th January 1870, all central jails in Bengal were appointed as places to which persons sentenced to transportation might be sent.—*Gazette of India*, 1870, p. 50.

The central prison at Lucknow has been appointed as a place to which persons under sentence of transportation may be sent.—*Gazette of India*, 1872, p. 840.

The city jail at Poona, the jail at Yerrowda near Poona, the district jail at Karachi, and the jail at Aden have been appointed to be places for the confinement of European British subjects.—*Bombay Gazette*, 1873, p. 99.

The jail for females at Ahmedabad is a place to which females sentenced to transportation in Guzerat in the Bombay Presidency may be sent. And the jail at Tanna is a place to which females sentenced to transportation in others parts of the Bombay Presidency than Guzerat may be sent.—*Bombay Gazette*, 1875, p. 754.

The district jails at Ahmedabad, Surat, and Satara have been appointed as places for the confinment of European British subjects sentenced to terms of imprisonment not exceeding one month; and the district jail at Kurwar, as a place for the confinement of persons of this class sentenced to terms of imprisonment not exceeding three months.—*Bombay Gazette*, 1874, p. 297.

The following places in the Punjab have been appointed as places of imprisonment for European British subjects:—Lahore Central Jail and the district jails of Peshawar, Rawal Pindi, Multan, Umbala, and Delhi.—*Punjab Gazette*, 1873, p. 76.

Under s. 88 of Act X of 1872, the following places were appointed for the confinement of European British subjects sentenced to imprisonment in the Madras Presidency:

The Madras Penitentiary.

The European prison at Ootacamund.

The central jail at	Rajamundry.	The district jail at	Bellary.
,,	Salem.	,,	Madura.
,,	Coimbatore.	,,	Chingleput.
,,	Trichinopoly.	,,	Cuddalore.
,,	Vellore.	,,	Cochin.
,,	Cannanore.	,,	Calicut.
The district jail at	Berhampore.	,,	Tellicherry.
,,	Vizagapatam.	,,	Mangalore.
,,	Rajamundry.	,,	

Mad. Notifications, December 21st, 1872, and Jany. 4th, 1873; Weir, p. 75.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

"**541A.** (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

"(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

"(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

"(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."—Act X of 1886, s. 15.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to be bound to interpret truthfully.

As to the interpretation of evidence to the accused or his pleader, see s. 361, *ante*, and Indian Oaths' Act, X of 1873, s. 5.

544. Subject to any rules made by the Local Government with the previous sanction of Governor-General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Expenses of complainants and witnesses.

The following rules as to the expenses of complainants and witnesses are in force in the various Presidencies:—

Bengal.

1. The Criminal Courts are authorized to pay at the rates specified below the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by, or under the orders, or with the sanction, of the Government, or any Judge, Magistrate or other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the schedule appended to the Criminal Code as not bailable; and (3) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of s. 351 of the Code (s. 540 of this Code).

2. No payment shall be made by Government to witnesses summoned at the instance of the complainant under s. 361 (244), unless the prosecution appear to the Court or Magistrate to be in furtherance of the interest of public justice; but under this section the Magistrate may require the complainants to pay their expenses.

Rate of payment:

(*a*) For the ordinary labouring class of natives, 2 annas per diem, together with actual railway fare by the lowest class:

(*b*) For natives of higher ranks in life, third class railway fare and 4 annas per diem for subsistence:

(*c*) For Europeans and natives of superior rank, second class railway fare and a sum not exceeding 1 rupee per diem for subsistence:

(*d*) For witnesses following any profession, such as medicine or law, a special allowance according to circumstances:

(*e*) For Government servants, actual travelling expenses only:

(*f*) In districts where no railway exists in part of Eastern Bengal, and where the only mode of travelling is by water, and in cases where persons travel by rapid dák by road, the actual expenses up to a minimum limit of Rs. 2 for boats per diem and 4 annas a mile for travelling by road may be paid, subject to the proviso that the travelling allowance is only to be given where the journey could not have been performed on foot, or in case of persons whose age, position, and habits of life render it impossible for them to walk.

Officers will be held responsible that parties of witnesses are brought to Court together, as far as possible, so as to save expense. Each person should not be allowed to charge for his own boat; and if a passage is offered him with others, he will have no claim for travelling allowance.

4. The number of days which should be allowed for the passage to and fro may be determined by the officer ordering payment in each case. For this purpose a table should be prepared and kept in each Court, showing the distance of each thannah from the Sudder Station and subordinate station, and the number of intermediate ferries to be crossed; the existence or absence of roads or other ways being also noted in the table.—*Calcutta Gazette*, 1873, p. 742.

Bombay.

"The presiding officer of any Criminal Court is authorized to pay the reasonable expenses of the complainants and witnesses in any bailable cases which, in the opinion of that officer, has been instituted in the interests of public justice."—*Bombay Gazette*, 1875, p. 101.

All witnesses and prisoners may be conveyed by rail at the expense of Government, wherever there may be a railway available.

Subsistence-money is to be paid day by day to each witness as it becomes due.—*Bom. H. C. Cir.* 42.

Witnesses from Native States.

In forwarding an application or summons for the attendance of a witness residing in a Native State, care should be taken to give such a description of him that he may be easily identified. Thus, for instance, besides the person's name and father's name, the requisition should indicate his age, caste, and village, and it should be mentioned if his village is in the neighbourhood of any well-known town.

The probable time during which the witness will be detained should also be stated: and in fixing the date, when the appearance of a witness is required, reasonable time should be given, so as to allow of his being found and sent off.

When practicable, the batta allowed by Government orders for the expenses of witnesses should be transmitted at the time of sending the requisition.

By these arrangements it is hoped that a greater degree of punctuality with regard to the attendance of witnesses from Native States will be secured, and the Court considers it desirable that officers should (when it is possible) avoid summoning such witnesses for the preliminary inquiry before the Magistrate in those cases where their evidence, though necessary before the Sessions Court, is not indispensable for the purpose of commitment. *Bom. H. C. Cr.* 41.

The following additional rules for regulating the expenses of complainants and witnesses attending criminal trials at the Court of the Presidency Magistrates are in force in Bombay :—

I. The Presidency Magistrates' Courts are authorized to pay at the rates specified below the expenses of complainants or witnesses (1) in cases in which the prosecution is carried on by, or under the orders or with the sanction of, the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the Presidency Magistrate to be directly in furtherance of the interests of the public service, (2) in all cases entered in column 5, sched. ii, appended to the Presidency Magistrates' Act, 1877, as not bailable, and (3) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of s. 134 of the Presidency Magistrates' Act, 1877.

(*a*) European and East Indian witnesses from the mofussil,* when summoned by a Presidency Magistrate's Court to give evidence, are to be allowed their actual expenses for carriage when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs 2 8 a day for subsistence, if they demand the same.

* Any place outside the limits of the town of Bombay but within the Presidency of Bombay or any place outside the local limits of the ordinary original civil jurisdiction of the High Court at Bombay but within the Presidency of Bombay

(*b*) As a general rule, native witnesses of the better class, as patels, pandu peshas, merchants, vakeels and persons of corresponding rank as well as all native witnesses who are in no way concerned in the cases in which their evidence is given, but whose evidence is required for furthering the ends of justice (such as attesting witnesses to depositions and inquest reports, provided they can read and write), are to be allowed, when they are summoned from the mofussil, six annas a day as subsistence money, and they are also to receive railway and other travelling expenses that have been actually incurred by them, provided the same be reasonable.

(*c*) Native witnesses of the class of cultivators and menials, who would not under ordinary circumstances, voluntarily incur any expense on account of special lodging when away from home, are to be allowed, when they are summoned from the mofussil, subsistence money at the rate of four annas a day, and are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable.

II.—Peculiar cases [that is, cases of witnesses summoned from the mofussil not coming under the operation of cls. (*a*), (*b*), and (*c*), of Rule I] are to be dealt with according to their merits, and at the discretion of the Court from which subsistence money or travelling allowance is demanded.—*Bombay Gazette*, 1878, p 608.

Madras.

I.—The Criminal Courts are authorized to pay at the rates specified in Rule III the expenses of complainants and witnesses in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of, the Government, or of any Judge, Magistrate, other public officer, or when it shall appear to the Judge or Magistrate presiding over such Court to be directly in furtherance of the interest of public justice; also in cases entered in column 5 of sched. iv appended to the Code of Criminal Procedure as not bailable, and in all cases in which the witnesses are compelled to attend by a Magistrate under the provisions of Chap XXVI of the Code.

II.—For the purposes of these rules, Europeans, East Indians, and natives shall be divided into three classes, and the Judge or Magistrate before whom they are required to appear either as complainants or witnesses shall be careful to fix the class with due regard to the station in life occupied by each complainant or witness.

III.—Travelling allowance and batta shall be paid at the rates specified below :—

	EUROPEANS AND EAST INDIANS.			NATIVES.		
	1st class.	2nd class.	3rd class.	1st class.	2nd class.	3rd class.
Travelling allowance—						
By rail ..	1st class fare.	2nd class fare.	3rd class fare.	1st class fare.	2nd class fare.	3rd class fare.
By road	8 as. per mile.	4 as per mile.	6 as. per mile.	6 as. per mile.	2 as per mile.	2 as. per mile.
By sea or canal	Actual expense of passage.			Actual expense of passage.		
Batta not to exceed	3 rupees per diem.	1 rupee per diem	8 annas per diem.	1 rupee per diem.	8 annas per diem.	4 annas per diem.

IV.—The distance for which mileage, and number of days for which batta, should be allowed for the journey to and from the station at which the Court is held and for attendance at Court, shall be determined by the Judge or Magistrate ordering the payment in each case.

V All bills for travelling allowance and batta to complainants and witnesses attending before the Courts of Magistrates of the second or third class shall be scrutinized by the Magistrate of the Division in which such Courts are situate before the charges, included in them, are finally passed.

VI. Whenever a Magistrate dismisses a case as frivolous or vexatious under s. 209 of the Code of Criminal Procedure (s 560 of this Act), no travelling allowance shall be granted to the complainant in such case.—*Madras Gazette*, 1873, p. 1096

North Western Provinces.

The Criminal Courts are authorized to pay at the rates specified below the expenses of complainants and witnesses,—*first*, in all cases, whether non bailable or bailable, in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, the Government, or of any Judge, Magistrate, or other public officer; *secondly*, in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable, when it shall appear to the presiding officer to be directly in furtherance of the interests of public justice; *thirdly*, in bailable cases, in which the presiding officer of the Court, if a Magistrate of the first class or in which the Magistrate of the District, on the recommendation of any Magistrate of the second or third class, considers that in the interests of public justice such payment is required; *fourthly*, in all cases in which the witnesses are compelled to attend by the Magistrate, under the provisions of s. 351 of the Code (Act X of 1872)

The rates referred to in the foregoing rule are as follows —

(*a*) For the class of natives who ordinarily attend the Courts, two annas per diem, *plus* third class railway fare, if the journey be made by rail.

(*b*) For natives of high rank in life, and for Europeans and Eurasians not coming under the next rule, the actual cost of conveyance (not exceeding six annas a mile) or second class railway fare, *plus* one rupee a day for subsistence.

(*c*) For Europeans and Eurasians following any profession, such as law or medicine, indigo planters and the like, actual expenses for conveyance (not exceeding eight annas a mile), or first class railway fare, *plus* an allowance not exceeding Rs. 5 per diem, the amount of the allowance to be fixed by order of the Court before which they appear.

(*d*) For Government servants, actual travelling expenses only.

The number of days which should be allowed for the passage to and fro will be determined by the officer ordering the payment in each case For this purpose a table should be prepared and kept in each Court, showing the distance of each thannah from the Sudder Station and subordinate stations, the number of intermediate ferries to be crossed, and the existence or absence of roads or waterways.—*N. W. P. Gazette*, 1875, p. 1076.

Panjab.

I.—The Criminal Courts are authorized to pay at the rates specified below the expenses of complainants and witnesses (1) in cases in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable; (3) in all cases which are cognizable by the Police, and (4) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under Chap XXVI of the Code of Criminal Procedure. (See s. 540, *supra*.)

II.—No payment shall be made by Government to witnesses summoned at the instance of the complainant, unless the prosecution appear to the Court or Magistrate to be in furtherance of the interests of public justice; but under this section the Magistrate may require the complainants to pay their expenses.

(*a*)—*Rates of subsistence allowance, that is, allowance for each day's necessary absence from residence at the Court—*

Natives.

(*a*) For the ordinary labouring class, two annas per diem.

(*b*) For witness of a somewhat higher grade, four annas per diem.

(*c*) For witness not included in classes (*a*) and (*b*), a sum not exceeding Re. 1 per diem.

Europeans.

(*d*) For ordinary European workmen, a sum not exceeding Re 1 per diem

(*e*) For European tradesmen and other Europeans of similar rank, a sum not exceeding Rs 3 per diem.

(*f*) For witnesses of other nationality not coming within the scope of the abovementioned classes, a special allowance according to circumstances.

III.—The Court in which a complainant or witness appears shall determine the class under which the complainant or witness shall be ranked.

(*b*)—*Travelling Rates.*

When the journey is made by rail, for classes (*a*) and (*b*), third class fare.

For class (*c*), second class fare.

For class (*d*), second or third class fare, at the discretion of the Court.

For class (*e*), second class fare.

For class (*f*), the fare actually paid.

IV —When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court; provided the expense incurred does not exceed eight annas a mile, and provided that the journey could not have been made on foot, or in the case of persons whose age, position, or habits of life render it impossible for them to walk The natives

in class (*e*) and Europeans in Class (*f*) a further sum may be allowed to cover the cost of carriage-hire to and from Court on the days of attendance at Court. (For rules as to fees of medical witness, see notes to s. 500, *supra*.)

Expenses of Witnesses in Trials before the Chief Court.

All disbursements on account, of expenses of complainants and witnesses attending criminal trials before the Chief Court will be made by the committing Magistrate and will be adjusted by him.

The committing Magistrate will determine the class to which each person belongs.

II.—Unless there should be any special reason in any particular case, complainants and witnesses travelling at the public expense cannot be allowed to travel by road and charge accordingly, when the journey can be accomplished more cheaply and expeditiously by rail.

III.—The committing Magistrate, when despatching complainants and witnesses to the Chief Court, will instruct them to report themselves to the Registrar of the Court on their arrival at Lahore, and will at the same time report to that officer—

(*a*) The name of each complainant and witness.

(*b*) The class to which he belongs.

(*c*) The date of his departure to attend at the Chief Court.

(*d*) Whether any advances have been made to him to enable him to reach Lahore; and if so the amount of such advances.

IV.—When the trial is concluded, the Registrar of the Chief Court will intimate to the committing Magistrate the date of the arrival of the complainants and witnesses at Lahore, and the date on which it was possible for them to quit the station. The boarding allowance at Lahore will cease as soon after the trial as the means of quitting the station become available.

V.—The committing Magistrate may make reasonable advances to complainants and witnesses to enable them to reach Lahore; and, when necessary, the Registrar of the Chief Court will make advances to them at Lahore to enable them to return to their homes. Care should be taken in making these advances that a larger sum is not paid to any complainant or witness than he is entitled to receive under these rules.

VI. Advances made by the Registrar under the preceding rule will be recovered at once from the committing Magistrate, who will include the same in his bill.

VII.—When all the expenses to which complainants and witnesses are entitled under the rules have been paid, the committing Magistrate will submit a bill for the same, supported by necessary vouchers, to the Registrar of the Chief Court for counter-signature. The Chief Court's counter-signature will be sufficient authority to support such charges in the public accounts.

VIII.—In trials before the Chief Court in the exercise of its original criminal jurisdiction, the expenses of only those witnesses for the defence whom the presiding Judge may consider material will be paid out of the public funds; and prisoners on being committed for trial should be warned to this effect. Should any witness be sent up to the Chief Court for the defence whom the presiding Judge may consider not material, the Registrar will certify the same to the committing Magistrate, who will thereupon decline to pay his expenses out of the public funds.—*Smyth*, p. 123

Burma.

In Burma, the undermentioned rule has been substituted for Rule VI of the sanctioned Rules for the payment of expenses of complainants and witnesses :—

VI.—In cases committed to the Recorder of Rangoon, or a Court of Sessions, the committing Magistrate will note in the list of witnesses the class to which each belongs, and will, on application, advance to any witness, on account of expenses, a sum not exceeding that to which the witness would be entitled under these rules up to the date fixed for the trial. Intimation of such advance shall at once be given by the committing Magistrate to the Court to which the commitment has been made, and the said Court shall, at the conclusion of the trial, deduct the amount so advanced from the sum found to be payable to the witness under Rule V.—*Burma Gazette*, 1875, Part II, p. 189.

Power of Court to pay expenses or compensation out of fine.

545. Whenever under any law in force for the time being a Criminal Court imposes a fine, or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

The award of compensation should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be founded upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial (*Queen* v. *Gour Churn Dass*, 11 W. R. Cr. 53); and the Court should record under what section, or on what grounds, it orders a portion of the fines inflicted on prisoners to be made over to the complainant—*Queen* v. *Bissonath Mundle*, 2 W. R. Cr. 58. An award of a portion of the fine as compensation after judgment has been pronounced and the fine credited to Government is illegal.—*Mad H. C. Pro.*, 13*th March* 1878; *Weir*, p. 6.

A Magistrate cannot direct that a portion of a fine inflicted under s. 434 of the Indian Penal Code be paid to an Amin for the purpose of paying the expense of his being deputed to restore landmarks destroyed by the opposite party The fine, or a portion of it, can only be paid to the person who has suffered by the offence, or as compensation for expenses incurred in prosecuting the case.—*Queen* v *Moorul Loll*, 6 W R. Cr. 93 *Hyat* v. *Mamun*, Punj Rec., 1890, p 12. So compensation cannot be given to the heirs of a person who has been killed.—*In re Roop Lall Singh*, 10 W R Cr. 30 *Lutchmaka*, I. L R 12 Mad 352.

An order awarding compensation to the innocent purchaser of property found to have been stolen is not authorized by this section.—*Mad. H. C. Pro.*, *3rd December* 1872, *Weir*, p 6 *Queen* v. *Reddon*, I L. R. 6 Mad. 286.

A Magistrate cannot, under this section, order payment of compensation to the complainant in addition to the fine.—*Mohesh Mundul* v. *Bholanath Mundul*, 3 C. L R. 404.

No fee is chargeable in advance on any process of a Criminal Court in a case in which the prosecution is on the part of Government, but it is competent to any Magistrate in such case, if the accused is convicted, to order that such fees shall be paid by the accused or any of them in like manner as if such fees had been paid by the prosecutor in the first instance. —22 W R Rules, 12.

Section 560, *post*, which has been substituted by Act IV of 1891 for s. 250 of this Code, enables a Magistrate in case of frivolous or vexatious complaints to give compensation.

If the compensation has been paid, it was said, there is no provision for compelling its refund on reversal of the order.—*Chogatta*, Punj Rec, 1889, p. 6. But see s. 547 and *Howanna Ram*, Punj. Rec., 1885, p. 25.

Payments to be taken into account in subsequent suit

546 At the time of awarding compensation, in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

The expression 'taken into account,' which occurred also in s. 308 of Act X of 1872, was held to mean that the compensation awarded by the Magistrate was to be taken into account by the Court in a subsequent civil suit, not that it was to be afterwards deducted from the damages awarded.—*Love* v. *Ainsworth*, 22 W. R. (Civil) 336.

Moneys ordered to be paid recoverable as fines

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

As to recovery of fines, see ss. 386—389, *supra*.

An order for maintenance under s. 488, is by that section made enforceable in the same manner as fines are recoverable.

Apparently on an order for compensation being reversed an order might be made by an Appellate Court under this section directing the refund of compensation where it has been paid.

Copies of proceedings

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

All prosecutors whose charges are dismissed are affected by the order of discharge, and are, therefore, entitled to obtain copies of the order made by, and of the depositions taken before, the Magistrate.—*Bank of Bengal* v. *Dinonath Roy*, I. L. R. 8 Cal. 106 (S. C.) 10 C. L. R 190.

Copies of Charges, Depositions, Final Orders, &c., exempted from Stamp duty in the case of Appellant Prisoners.— In the exercise of the powers conferred on him by s. 35 of the Court Fees Act, 1870 (No. VII), the Governor-General in Council is pleased to exempt from stamp duty copies of final sentences or orders passed by Criminal Courts which parties, desirous of appealing from such sentences or orders, are required by s. 416 (423) of the Code of Criminal Procedure to file with their petition of appeal, provided that the party who is desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same.

This exemption will also extend, under the same circumstances, to copies of the judgment or reasons for passing or making such sentence or order as above.—*Notification, Government of India, No. 2520 of 5th April* 1872, *Wilkins*, p. 117. See note to s. 371, *supra*.

Again, in exercise of the power conferred by s. 35 of the Court Fees Act (VII of 1870), the Governor General in Council was pleased to remit the fees leviable on copies of depositions furnished to accused persons under s. 201 (548) of Act X of 1872, and on a copy of the judgment or order passed by a Criminal Court, and of a Judge's charge to the jury furnished under s 276 (548) of Act X of 1872, to any person affected by such judgment or order, provided that such person is in jail, or the Court, for some special reason, see fit to grant such copy free of expense.—*Gazette of India*, 1873, p 520.

Charges for Authenticated and Unauthenticated Copies.—(*a*) In all Criminal Courts, a uniform charge shall be made for the preparation of copies, whether certified or uncertified, at the rate of four annas per folio This term, it is to be carefully explained to all subordinate officers, merely denominates a certain quantity of manuscript, the folio to consist of 150 words English, or of 300 words vernacular, four figures counting as one word.

(*b*) It is intended that this charge should eventually be levied by means of an impressed stamp of four annas on each sheet of paper corresponding with the folio to be provided by the applicant for a copy The preparation locally of special stamps for the purpose has been authorised by the Government. Some delay is, however likely to occur in obtaining paper of the proper size and description. Till such stamps are available, sheets bearing each an impressed (non judicial) stamp of two annas will be used for the preparation of the copies. Each of these sheets is intended to contain half a folio—that is, 75 words English, or 150 words vernacular. As there are 15 lines in each sheet, no line should contain more than 5 words English, or 10 words vernacular.

(*c*) All copies, whether authenticated or unauthenticated must, in future, before issue, be examined by a salaried officer.* The copies themselves will in all cases be made by section writers who will be remunerated at the rate of two annas per folio.

(*d*) Half the charge of four annas per folio, levied by means of the impressed stamp, represents the payment to Government on account of the salary of examiners, cost of paper, &c., the other half will represent the earnings of the section writers, whose accounts will be made up monthly, and the amount due to each paid out of contingencies. These payments must be checked at the time with the upper part of each stamp, which, when the copy is ready, must be torn off each sheet, along the perforated line, and then endorsed with the copyist's name, and kept till the end of the month. Care must be taken to see that nothing in excess of half the amount realized in stamps is paid away.

(*e*) To prevent the risk of stamped slips being used more than once, the officer passing the copyist's account will, after checking it as directed, tear the slips to pieces and cause them to be burnt in his presence. A certificate that this has been done must be attached to the contingent bill on which the copyist's fees are drawn.

(*f*) To protect the interests of the Government, care must be taken to see that all copies issued from the Courts are prepared on the prescribed stamp paper, they *must* be written on one side of the sheet only, and must not contain more than the authorized number of words. On the other hand, care must be taken to see that applicants are not imposed upon by the copyists spreading their writing over a large number of sheets than is necessary By insisting on the number of lines in each sheet being uniform control may easily be exercised in this matter, the number of words in a few of the lines in each folio being checked The business of a copyist is (like most other occupations) one calling for skill and greatly dependent for its successful practice on experience copyists, therefore, must possess or acquire skill in their business, or they ought not be retained

(*g*) When an applicant requires his copies to be furnished on the day of application, an extra fee of one rupee† shall be charged on all copies so furnished, to be levied from him by a Court fee stamp, which should be affixed to the application for the copy and be entered in the register for Court-fee stamps. Care, however, is to be taken that other applicants for copies do not materially suffer by the arrangement. If the granting of other copies be much delayed by this rule, an extra hand ought to be told off to furnish their copies

(*h*) Under ordinary circumstances, the time for furnishing the copies required shall not be later than 1 P.M of the fifth open day after the presentation of the application.

(*i*) In the case of authenticated copies, the Court fee chargeable under the Court Fees Act should be levied by affixing the necessary stamp to the first folio of the copy.

(*j*) In the case of maps and plans, no general rule can be laid down. In each case a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done. Half will be paid to the copyist, and half credited to Government on account of examination fees and cost of materials.—*Cal. H. C. C. O., No.* 35 *of 1st October* 1880, *Wilkins*, pp 135 139

Copies of Convictions and Sentences of Persons in the Military Department.—Judicial Commissioners, Sessions Judges, and Magistrates will forward to the Military Department of the Government of India a copy of the conviction and sentence in all cases in which persons serving under the Government of India in that Department are convicted in a Criminal Court.—*Cal. H. C. C. O., No.* 6 *of* 17*th July* 1871, *Wilkins*, p 139.

Copies of Letters and Resolutions of the High Court.—Applications made to the local authorities for copies of any letters from, or resolutions passed by, the High Court, must be referred to the Court for orders Copies of such documents may not be granted by the local authorities. This rule is not to be considered to apply to the sentences of the High Court in criminal trials.—*Cal. H. C. C. O., No.* 100 *of* 19*th April* 1844, *Wilkins*, pp 139 140

Copy of Judgment of Sessions Judge how and for what purpose obtainable by District Magistrate —Whenever an application is made by the Magistrate of the District to the Sessions Judge for a copy of any of the proceedings before the Court of Session, the Judge shall permit a copy to be made by any person whom the Magistrate may depute for that purpose. Such copies will be granted only for the information and guidance of Magistrates and committing officers, who are not at liberty to cavil at the judgment of the Sessions Court, or enter into any discussion with the Judge upon its merits.—*Cal. H. C. C. O., No.* 1 *of* 8*th January* 1864, *Wilkins*, p 140.

The following rules are in force in Bombay —

I.—Every complainant shall, upon showing good cause, be entitled to receive certified copies of depositions and all documents recorded in evidence in the case Such copies shall be made at the expense of the person applying for them.

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* The duty of examining copies should, as a rule, be entrusted to the Head Clerk or Sheristadar, but where this is not possible, the Judge of the Court should make any other suitable arrangement, except that the copyists must not be allowed to examine for each other.—*Cal. H. C. C. O.* (*Civil*), *No.* 8 *of* 29*th June* 1875, *Wilkins* p 136.

† This is a fee for credit to Government, and no part of it is payable to the copyists.

II.—Where a Magistrate is unable to procure a clerk to make a copy which any person is entitled to receive, he should cause it to be made by the establishment of the Magistrate of the District.—*Bombay Gazette*, 1879, p. 471.

Rules regarding copying fees in Criminal Courts :—

I.—No fee should, under any circumstances, be taken for any copy which the person receiving it is entitled by law to receive *gratis*.

II.—All copies should be not merely correct, but should also be made in a clear clerk's hand. The practice of allowing schoolboys and domestics to make copies, which are scarcely legible, should be everywhere discontinued.

III.—The Sessions Judge or the District Magistrate should prescribe the fees to be charged for copying every kind of document in the Sessions Court or the Magisterial Court, and may, if necessary, prescribe different rates of fees for different Courts: Provided that the fees charged for copying shall not exceed the following rates :—

In the case of English copies, two annas per 100 words.

In the case of vernacular copies, half anna per 100 words.

In the case of certified copies, an additional half anna per 100 words, for examining and comparing.

IV.—The fees for making each copy may be paid to the particular clerk by whom each document is prepared; or all the fees paid in each Court for copies collected during the month, may be distributed at the end of the month, at the discretion of the presiding Judge or Magistrate, amongst the persons employed by him as copyists.

V.—Copies may be made by any competent person, whether he be a member of the Court establishment or not: Provided that no permanent member of the Court establishment shall make copies for which fees are charged during the time known as 'office hours,' nor when his services are otherwise required by his superior officer.—*Bombay Gazette*, 1881, p. 389.

A copy of the reasons recorded by any Criminal Court, under s. 429, for passing a sentence or final order in a case, shall be furnished without delay on the application of any party to the case in which such sentence or order is passed.

Such copy should be made at the expense of the party applying for it, and on his furnishing such stamp paper as may be required by law, but where a Magistrate F. P. is unable to procure a writer to make a copy at the expense of a party, he should cause a copy to be made by the establishment of the Magistrate of the District at the Sudder Station.—*Bombay H. C. Cir.*, 257.

In order to aid Appellate Courts in determining whether appeals are barred by limitation, every Criminal Court subordinate to the High Court shall cause to be endorsed the following particulars on every copy of a judgment, order, or charge to a jury, furnished under the provisions of s. 276 or 404 (s. 548 or 371) of the Code of Criminal Procedure :—

The date on which the copy was applied for.
The date on which it was ready for delivery.
The date on which it was delivered.

To prevent unauthorized alterations being made, the dates should be written in letters in a distinct handwriting, and each endorsement should be signed by some responsible officer of the Court on the date to which it refers.—*Bombay Gazette*, 1879, pp. 471, 475. See *Cal. C. O., No.* 1, 18*th June* 1883; *Wilkins*, p. 138.

The following rule is in force in Burma :—

On all copies of judgments and orders granted to applicants, note shall be made by the Clerk of the Court or other responsible officer—

(1) of the date on which application for copy was made, and

(2) of the date on which copy was ready for delivery to the applicant.

—*Burma Gazette*, 1875, Part III, p. 23.

Under the rules in force in Madras, copies of any portion of the record of a criminal trial must be furnished to the parties concerned on payment of the proper stamp and the authorised fee for copying. Where the Judge's notes form the only record of the evidence, copies of those notes should be given. A prisoner sentenced to death is entitled to obtain a copy of the Judge's letter of reference.—*Mad. H. C. Pro.*, 21*st March* 1860, 5*th January* 1863, *and* 11*th December* 1865; *Weir*, p. 9.

549. The Governor-General in Council may make rules, consistent with this Code and the Army Act [1881], or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-Martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act [1881], section 41, to be tried by a Court-Martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the Commanding Officer of the regiment, corps or detachment to which he belongs, or to the Commanding Officer of the nearest military station, for the purpose of being tried by Court-Martial.

Delivery to Military authorities of persons liable to be tried by Court-Martial.

Every Magistrate shall, on receiving a written application for that purpose by the Commanding Officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Apprehension of such persons.

See Beng. Reg. XX of 1823, a Regulation for declaring the jurisdiction of the Military Courts-Martial and Courts of Requests. The dates in brackets have been struck out by Act XII of 1891, Sched. I. See s. 5, *ante*.

550. Police-officers superior in rank to an officer in charge of a Police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Powers of superior officers of Police.

As to the powers and duties of an officer in charge of a Police-station, see note to s. 4 (*o*). See also *Emp.* v. *Tucker*, I. L. R. 7 Bom. 42, and section 127, *supra*.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Power to compel restoration of abducted females.

The terms of this section are general. It may, however, be questioned whether it could be acted upon where the woman or child has been abducted and taken out of the jurisdiction, and detained out of the jurisdiction of the Court.

As to what is an unlawful detention, see *Abraham* v. *Mahtabo*, I. L. R. 16 Cal. 487.

See s. 491 *supra*, and *In re Saithri*, I. L. R. 16 Bom. 307.

552. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

Compensation to person groundlessly given in charge in Presidency-town.

In such cases, if more persons than one are arrested [*or complained against*—repealed by Act IV of 1891, s. 3,] the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

As to the recovery of fines, see ss. 386–388, *supra*.

553. With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of Chartered High Courts to make rules for inspection of records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(*a*) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts ;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided ;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it ; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines :

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

Upper Burma :—In Upper Burma, excepting the Shan States, rules under section 553, clause (*c*), may regulate the following among other matters, namely :—

(*a*) the fees to be paid for processes ; and

(*b*) the fees to be paid for copies and inspection of records.—Reg. V of 1892, Sched. (XVI.)

Sonthal Perguunahs :—See Reg. V of 1893, s. 4 (VI).

For rules as to the expenses of complainants and witnesses coming from the Mofussil to attend criminal trials before the High Court, Calcutta, on its Original Side, see *Belchambers's Rules and Orders*, p. 348.

The following rule was passed under s. 202 of Act X of 1872 by the Bombay High Court :—

The High Court directs that when death or grievous hurt has been caused by a blow from a stick or other similar weapon, the weight and dimensions of the weapon should be stated in the Sessions proceedings with such particularity as may enable the High Court (which has no opportunity of seeing it) to form an opinion as to the character of the weapon and the intention with which it was probably used. The mere entry of 'a stick' or 'a stone' in the list of property produced before the Sessions Court does not enable the High Court to judge whether the stick or the stone was a deadly weapon or a comparatively harmless weapon.—*Bombay Gazette*, 1881, p. 370.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

Burma :—Subject to the provisions in this section the Recorder of Rangoon may make rules as to forms and other matters under Act XI of 1889, s. 91.

For the form of warrant issued in Burma to a jailor, in cases where the payment or levy of a fine or portion of a fine has the effect of reducing the imprisonment to which an offender has been sentenced, see *Burma Gazette*, 1878, p. 211.

In a recent case, *Habiboolah* v. *Emp.*, I. L. R. 10 Cal. 937, the prisoner was convicted on an alternative charge in the form provided by Schedule V, XXVIII, II (4), *post*, of having given false evidence, such evidence consisting of contradictory statements contained in *one* deposition while he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false, the conviction being in accordance with the charge. It was held by WILSON and TOTTENHAM, JJ. (NORRIS, J., dissenting), that the conviction was good. The form referred to, it is to be observed, contemplates that the contradictory statements in respect of which the perjury is assigned have been made on different occasions ; but the Court, in the case referred to, considered this section sufficiently provided for the modification of the form so as to meet the case before it. See *Emp.* v. *Ghulet*, I. L. R. 7 All. 45, overruling *Niaz Ali*, I. L. R. 5 All. 17.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

As to transferring cases, see s. 526, *ante*.

Every member of a Committee constituted under the Central Provinces Municipalities Act, XVIII of 1889 (s. 3), shall be deemed to be a Municipal Commissioner. As to the Punjab, see Act XIII of 1884, s. 157; British Burma, Act XVII of 1884, s. 146.

Under the Cantonments Act, XIII of 1889, a Judge or Magistrate shall not be deemed within the meaning of s. 556 of the Code to be a party to, or personally interested in, any prosecution against that Act because he is a member of the Cantonment Committee, or, where there is no such Committee, is the Commanding Officer of the Cantonment, because he has ordered or approved the prosecution.

Irregularities at Trial.—A Magistrate is not disqualified from dealing with a case judicially, merely because in his character of Magistrate it may have been his duty to initiate the proceedings, yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, or where he himself discovered the offence and initiated the prosecution, and was one of the principal witnesses for the prosecution (*Reg.* v. *Bholanath Sen*, I. L. R. 2 Cal. 23: see also *Reg.* v. *Hiralal Dass*, 8 B. L. R. (F.B.) 422); and a recent case in England,—*Reg.* v. *Meyer*, L. R. 1 Q. B. D. 173.

In *Wood* v. *Corporation of Calcutta*, I. L. R. 7 Cal. 322: (S. C.) 9 C. L. R. 193, a conviction was held illegal, on the ground that the Magistrate, in a prosecution by the Corporation of the Town of Calcutta, had, by his connection as a servant of the Corporation, such an interest, pecuniary or personal, as was likely to give him a bias in the matter of the prosecution. So in a recent case before the Calcutta High Court, it was held, that a conviction of an offence against any Municipal law or regulation had before a Bench of Magistrates which includes a salaried officer of the Municipality is bad.—*In re Nobin Krishna Mookerjee*, I. L. R. 10 Cal. 194. In the case of *Dimes* v. *Grand Junction Canal*, 3 H. L. Cas. 793, LORD CAMPBELL said:—"It is of the last importance that the maxim, that no man is to be judge in his own cause, should be held sacred. And that is not to be confined to a cause in which he is a party, but is to be applied to a cause in which he has an interest." In that case a bill in equity was filed by an incorporated company, and a decree was made by the LORD CHANCELLOR, but the decree was afterwards set aside, on the ground that the LORD CHANCELLOR was himself a shareholder in the company. See *Reg.* v. *Bholanath Sen*, I. L. R. 2 Cal. 23: *Reg.* v. *Mukta Sing*, 4 B. L. R. Ap. Cr. 15: *Reg.* v. *Hiralal Dass*, 8 B. L. R. 422: *Reg.* v. *Milledge*, L. R. 4 Q. B. D. 332: and *Reg.* v. *Gibbon*, L. R. 6 Q. B. D. 168.

In *Serjeant* v. *Dale*, L. R. 2 Q. B. D. 558, the following remarks were made by the Court (see pages 566 and 567):—"By the Common Law, a Judge who has an interest in the result of a suit is disqualified from acting, except in cases of necessity where no other Judge has jurisdiction. . . . The law does not measure the amount of interest which a Judge possesses. If he has any legal interest in the decision of the question one way he his disqualified, no matter how small the interest may be. The law in laying down this strict rule has regard, not so much, perhaps, to the motives which may be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important object at all events is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security. . . . We are anxious not to be misunderstood in using this language. No right minded person does or can for a moment entertain the thought that the right reverend prelate who was called upon to act in this case was or could be influenced by any consideration of personal interest in the proceeding. . . . . The applicant stands upon his legal right and calls upon us to give effect to it."

The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that the complaint in such a case should be referred to another Magistrate.—*In re Basapa*, I. L. R. 9 Bom. 172. See *Emp.* v. *Sahadeo*, I. L. R. 14 Bom. 573.

On the 29th March 1883, the Municipal Commissioners of Commillah, at a meeting, issued an order under s. 256 of the Bengal Municipal Act of 1876. For having disobeyed that order, the accused was tried and convicted before the District Magistrate under s. 188 of the Penal Code, and fined. The Magistrate who tried and convicted the accused was present as Chairman of the Municipal Commissioners at the meeting of the 29th March when the order was passed. On revision, the conviction was set aside by the High Court as illegal.—*In re Kharak Chand Pal*, I. L. R. 10 Cal. 1030. See *Emp.* v. *Evagadu*, I. L. R. 15 Mad. 83.

Prosecution.—A Magistrate who has been authorized by the Collector of a District under s. 43 of the Stamp Act to prosecute offenders under the stamp laws is not competent also to try the persons whom he prosecutes.—*Emp.* v. *Gangadhur Bhunjo*, I. L. R. 3 Cal. 622.

Imputation of Prejudice.—The accompanying copy of a despatch from the Secretary of State for India to the Government of Madras was circulated for the information and guidance of all Judges and Magistrates:—

"The memorialist was prosecuted by the Collector, and he alleges that when the Sessions Judge came to try the case, he resided at the Collector's house and was greatly prejudiced by the Collector against the memorialist. I have no doubt that the latter assertion is quite unfounded, but I think it would be well if your Grace in Council would suggest to the Judges, through the High Court, to avoid, as far as possible, becoming the guests of those who are interested in cases, civil or criminal, which will eventually be submitted to the Judge's decision. All possible imputation of prejudice against the weaker party will thus be avoided."—*Mad. H. C. C. O., No. 7, of 7th April* 1877.

Power to decide language of Courts.

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

With the permission of the Presidency Judge or Magistrate, any advocate or pleader may address the Court in English, when anyone of the pleaders on the opposite side is acquainted with

that language, or whenever the senior of such pleaders or his client consents to this being done.—*Cal. H. C. O., No. 4, of 15th March* 1869; *Wilkins* p. 4.

In Madras, advocates pleading in any lower Court in which the language of the Judge is English, may address the Court in that language, the Judge making arrangement for the interpretation, if necessary, of such address to the pleader on the other side.—*Mad. H. C. Pro., 22nd July*, 1858; *Weir*, p. 26.

Hindi was declared to be the Court language to be used in judicial and revenue proceedings in the Darjeeling District (*Calcutta Gazette*, 1873, p. 1116); Assamese in the five valley districts of Assam, *viz.*, Kamroop, Durrung, Nowgong, Seebsagor, and Luckimpore.—*Calcutta Gazette*, 1873, p. 912.

Canarese has been declared to be the language in ordinary use in the Criminal Courts of the District of Belgaum.—*Bombay Gazette*, 1874, p. 338.

Powers of Governor-General in Council and Local Government exercisable from time to time.

This is new.

557. All powers conferred by this Code on the Governor-General in Council or on the Local Government may be exercised from time to time as occasion requires.

Pending cases.

558. *The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.*

[Repealed by Act XII of 1891, Sched.]

As to the retroactive force of enactments relating to procedure, see *In re Ratanat Kaliarji*, I. L. R. 2 Bom. 148, and *Uda Begum* v. *Imam ud-din*, I. L. R. 2 All. 74. See also *Srinivasachari* v. *Queen*, I. L. R., 6 Mad., 336.

Officers concerned in sales not to purchase or bid for property.

"**559.** A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property." [Act X of 1886, s. 16.]

560. (1) *If, in any case instituted by complaint as defined in this Code, or upon information given to a Police-officer or to a Magistrate, a person is accused of any offence triable by a Magistrate, and the Magistrate by whom the case is tried discharges or acquits the accused and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit:*

Provided that, before making any such direction, the Magistrate shall—

(*a*) *record and consider any objection which the complainant or informant may urge against the making of the direction, and,*

(*b*) *if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.*

(2) *Compensation of which a Magistrate has ordered payment under sub-section* (1) *shall be recoverable as if it were a fine:*

Provided that, if it cannot be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(3) *A complainant or informant who has been ordered under sub-section* (1) *by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order, in so far as the order relates to the payment of compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.*

(4) *Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section* (3), *the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.*

(5) *At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section.* [Act IV of 1891, s. 2.]

This section has been substituted for s. 250 of the Code which had been repealed. It is wider in its extent than s. 250 was. Now an informant to a Police-officer or a Magistrate as well as a complainant is liable for making a vexatious or frivolous accusation.

In cases instituted on complaint if the accused is acquitted after being called upon to go into a defence and even after all the evidence is recorded compensation may be awarded.—*Emp.* v. *Pandu Valad*, I. L. R. 10 Bom. 109.

Complaint.—As to what is a complaint, see s. 4 and notes to ss. 191 (*a*), 195, and *Bharat Chunder Nath*, I. L. R. 20 Cal. 481, and *In re Keshav Lukshman*, I. L. R. 1 Bom. 175.

No appeal lies from an order under this section. See Chapter XXXI: and see *Mad. H. C. Pro.*, 22*nd November* 1879; *Weir*, p. 5.

For form of warrant of imprisonment on failure to recover amends by distress, see Sched. V, No. 30.

As to the mode of recovering compensation, see ss. 386, 387, *infra*.

The special provisions of this section are applicable only in the case of original trials under this Chapter. See *Pro.*, 14*th February* 1873, 27*th February*, 1875 (8 *Mad. H. C. R. Appx.* vii), *and* 18*th February* 1879: and *Reg.* v. *Ramji Valat Doji*, 5 Bom. H. C. R. Cr. 12: *In re Gurningapa*, 7 Bom. (Crown Cas.) 58: *Rathanath Panja* v. *Wooma Churn Chowdhry*, 22 W. R. Cr. 12.

A complaint may be both frivolous and false. The award of compensation for making a frivolous complaint does not preclude the Magistrate who makes it from subsequently sanctioning a prosecution for making a false complaint.—*Mad. H. C. Pro.*, 12*th November* 1875; *Weir*, p. 5. He may make an order directing the complainant to make amends to the accused, notwithstanding that the complainant is to take his trial for perjury.—*Reg.* v. *Roopun Ras*, 15 W. R. Cr. 9: (8. C.) 6 B. L. R. 206. The whole or any part of any fine recovered may be ordered to be applied in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.—*S.* 545, *post*.

A complaint may of course be well founded as regards some of the defendants and yet vexatious and frivolous as regards others and compensation may be ordered to be paid to those as regards whom it is frivolous or vexatious.—*Number* v. *Ambu*, I. L. R. 5 Mad. 381.

When several distinct charges are made, in respect of some of which compensation can, and in respect of the others compensation cannot, be awarded, the Magistrate may, in dismissing the charges, award compensation.—*Mothoosoodun Ghose* v. *Joyram Huzrah*, 13 W. R. Cr. 39. But see *Gunamansee* v. *Haree Dutta*, 18 W. R. Cr. 6, where an award of compensation was set aside as illegal in a case of criminal force and theft or robbery, because the charge was in part one of theft or robbery, and because criminal force really was used to the complainant.

An illegal seizure of cattle under colour of the Cattle Trespass Act, 1871, not having been constituted an offence under that Act or otherwise, an award of compensation under this section of the Code to the accused on such complaint is illegal—*Pitchi* v. *Ankappa*, I. L. R. 9 Mad. 102: *Kottalanada* v. *Muthaya*, I. L. R. 9 Mad. 374: *In re Kallachand*, I. L. R. 13 Cal. 304.

Compensation cannot be directed to be given by order under s. 110, *supra*, where there is no evidence on which the Magistrate can direct security to be given.—*Jay Singh* v. *Kanhya*, Punj. Rec., 1884. p. 72.

A Magistrate, in making an order for compensation, is ordinarily bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay; but if such person admits that he has no goods and thereby waives the right to have the amount levied by distress, the Magistrate may proceed to imprison him in the civil jail. The warrant of distress cannot have currency simultaneously with the imprisonment, because the alternative permitted in case of failure to realize has already been adopted.—*Bisheshwar Shaha* v. *Bishvambhur Sircar*, 23 W. R. Cr. 64.

A Magistrate cannot exceed the amount mentioned in the Code, and he can only award that any sum not exceeding that amount be paid to the accused by way of compensation; he cannot impose it as a fine, otherwise than in compensation, and he cannot directly sentence the complainant to imprisonment in default of payment. The amount awarded is recoverable by distress and sale of the complainant's property, and in default of such distress, by imprisonment of the complainant.—*Reg.* v. *Gopal*, 2 All. 430.

Compensation may be given in summons-cases, and in all such cases, whether tried summarily or not, if the Magistrate acquits and is also of opinion that the complaint was vexatious or frivolous it is open to him to award compensation.—*Emp.* v. *Basava*, I. L. R. 11 Mad. 142; *Reg.* v. *Yellappa Bin Mudkappa*, 1 Bom. H. C. R., 181. See *Somu* v. *Reg.*, I. L. R. 6 Mad. 316.

The fact that the accused has been tried and acquitted is no bar to the award of compensation.—*Number* v. *Ambu*, I. L. R. 5 Mad. 381: *Emp.* v. *Pandu Valad*, I. L. R. 10 Bom. 109.

Special provisions with respect to offence of rape by a husband.

561. (1) *Notwithstanding anything in this Code no Magistrate except a Chief Presidency or District Magistrate shall—*

(*a*) *take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or*

(*b*) *commit the man for trial of the offence:*

(2) *And, notwithstanding anything in this Code if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a Police-officer with respect to such an offence as is referred to in sub-section* (1) *of this section, no Police-officer of a rank below that of Police Inspector shall be employed either to make, or to take part in, the investigation.* [Act X of 1891.]

SCHEDULE I.

ENACTMENTS REPEALED.

(a)—*Statute.*

Year, reign and chapter.	Title.	Extent of repeal.
13 Geo. III, chapter 63	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(b)—*Acts of the Governor-General in Council.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840	Execution of process . .	So much as has not been repealed.
XLV of 1860	Penal Code	The illustrations to section 214.
V of 1861	Police Act	Section 6 and the last nine words of section 24. Section 35, down to and including the words 'provided that.'
XVIII of 1862 ...	Criminal Procedure, Supreme Courts	So much as has not been repealed.
VI of 1864	Whipping	Section 7.
II of 1869	Justices of the Peace	So much as has not been repealed.
XXII of 1870	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872	Punjab Laws	So far as it relates to Bengal Regulation XX of 1825.
X of 1872	The Code of Criminal Procedure ...	So much as has not been repealed.
XI of 1874	Amending the Code of Criminal Procedure.	The whole.
XV of 1874 ...	Laws Local Extent	So far as it relates to Bengal Regulation XX of 1825.
X of 1875	High Courts' Criminal Procedure ...	The whole Act, except section 144 and so much of section 146 as relates to informations (1).

(1) Sections 144 and 146 of Act X of 1875 are as follows:—

144. The Advocate-General may with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the Local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer.

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

146. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate-General may, if he think fit, inform the Court on behalf of Her Majesty that he will no further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

(b)—*Acts of the Governor General in Council.*—(Contd.)

Number and year.	Subject.	Extent of repeal.
XX of 1875	Central Provinces Laws	So far as it relates to Bengal Regulation XX of 1825.
XVIII of 1876	Oudh Laws	Ditto.
IV of 1877	Presidency Magistrates ...	The whole Act except section 57 (1).
XXI of 1879	Extradition	Chapter III.
X of 1881	Coroners	Sections 8 and 9.

(c)—*Regulations.*

Number and year.	Subject.	Extent of repeal.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial	So much as has not been repealed.
III of 1872	Santhal Parganas Settlement	So far as it relates to Act X of 1872.
IX of 1874	Arakan Hills District Laws	So far as it relates to Acts II of 1869, X of 1872, and XI of 1874.
III of 1877	Ajmere Laws . .	So far as it relates to Bengal Regulation XX of 1825.

(d)—*Act of the Governor of Fort St. George in Council.*

Number and year.	Subject.	Extent of repeal.
VIII of 1867	Police	Section 9.

(1) Section 57 of Act IV of 1877 is as follows —

A fee of eight annas shall be paid for every summons of warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty.

SCHEDULE II

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively 'Offence' and 'Punishment under the Indian Penal Code,' are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column

The third column of this schedule applies to the Police in the towns of Calcutta and Bombay

CHAPTER V.—ABETMENT

1	2	3	4	5	6	7	8
Section	Offence	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence if the person abetted does the act with a different intention from that of the abettor.	Ditto ..	Ditto	Ditto	Ditto	Ditto ...	Ditto.
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto	Ditto	Ditto	Ditto ..	The same punishment as for the offence intended to be abetted.	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor	Ditto .	Ditto .	Ditto .	Ditto	The same punishment as for the offence committed	Ditto.
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto ..	Ditto	Ditto	Ditto	Ditto	Ditto.

115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation for life.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description provided for the offence, or fine, or both.	Ditto.

CHAPTER VI — OFFENCES AGAINST THE STATE

1	2	3	4	5	6	7	8
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
121	Waging or attempting to wage war or abetting the waging of war against the Queen	Shall not arrest without warrant.	Warrant	Not bailable	Not compoundable	Death or transportation for life and forfeiture of property	Court of Session
121A	Conspiring to commit certain offences against the State.	Ditto	Ditto	Ditto	Ditto	Transportation for life or any shorter term or imprisonment of either description for 10 years	Ditto.
122	Collecting arms &c. with the intention of waging war against the Queen	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 10 years and for feiture of property	Ditto
123	Concealing with intent to facilitate a design to wage war	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto
124	Assaulting Governor General Governor &c with intent to compel or restrain the exercise of any lawful power	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine	Ditto.
124A	Exciting or attempting to excite disaffection	Ditto	Ditto	Ditto	Ditto	Transportation for life or for any term and fine or imprisonment of either description for 3 years and fine or fine	Ditto
125	Waging war against any Asiatic Power in alliance or at peace with the Queen or abetting the waging of such war	Ditto	Ditto	Ditto	Ditto	Transportation for life and fine or imprisonment of either description for 7 years and fine or fine.	Ditto.
126	Committing depredation on the territories of any power in alliance or at peace with the Queen	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine and forfeiture of certain property	Ditto
127	Receiving property taken by war or depredation mentioned in sections 125 and 126	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.

129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Fine of 500 rupees	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
143	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto ...	The same as for the offence ...	The Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto ...	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons ...	Bailable ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto	Ditto	Ditto ...	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed	Ditto	Summons	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto	Ditto	Ditto	Fine of 1,000 rupees	Presidency Magistrate or Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto	Ditto	Ditto	Ditto	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
	Or to go armed	Ditto	Warrant	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray ...	Shall not arrest without warrant.	Summons	Ditto	Ditto	Imprisonment of either description for 1 month, or fine, of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both and confiscation of property, if purchased.	Ditto.
170	Personating a public servant ...	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Shall not arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.

186	Obstructing public servant in discharge of his public functions	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 months, or fine of 500 rupees, or both	Ditto
187	Omission to assist public servant when bound by law to give such assistance	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of of fences, &c	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction annoyance or injury to persons lawfully employed	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto
	If such disobedience causes danger to human life, health or safety &c	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
189	Threatening a public servant with injury to him or one in whom he is interested, to induce him to do or forbear to do any official act	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for one year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

193	Giving or fabricating false evidence in a judicial proceeding	Shall not arrest without warrant.	Warrant	Bailable	Not compoundable	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto	Ditto	Ditto	Ditto	Death, or as above	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*Continued*).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	The same as for the offence	Court of Session.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ..	Ditto	According as the offence of giving such evidence is bailable or not.	Ditto	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto ...	Bailable	Ditto	The same as for giving false evidence.	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto	Ditto	Ditto	Ditto	Ditto ...	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto	Ditto	Ditto	Ditto	Ditto . ..	Ditto.
200	Using as true any such declaration known to be false.	Ditto	Ditto	Ditto	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, of giving false information touching it to screen the offender if a capital offence.	Ditto .	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or imprisonment for 10 years.	Ditto	Ditto	Ditto ...	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

	If punishable with less than 10 years' imprisonment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*Continued*).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
211	False charge of offence made with intent to injure.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
	* "If offence charged be punishable with imprisonment for 7 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class."
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

	If with imprisonment for less than 10 years	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term and of the description provided for the offence or fine or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender if the offence be capital	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine	Court of Session Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term and of the description provided for the offence or fine, or both	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence without causing apprehension of offender	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for * years or fine or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody or whose apprehension has been ordered if the offence be capital	May arrest without warrant.	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine	Court of Session Presidency Magistrate or Magistrate of the first class
	If punishable with transportation for life or with imprisonment for 10 years	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, with or without fine	Ditto
	If with imprisonment for 1 year and not for 10 years	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term and of the description provided for the offence or fine or both	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons	Ditto	Ditto	Imprisonment of either description for 2 years or fine, or both	Presidency Magistrate or Magistrate of the first or second class.

* This line of entries was inserted by Act X of 1886 s 17

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto,
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.

	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than ten years; or lawfully committed to custody.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine or, both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If charged with an offence punishable with transporation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If under sentence of death ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
"225A	*Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for—						
	(*a*) in case of intentional omission or sufferance.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	(*b*) in case of negligent omission or sufferance.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

* Inserted by Act X of 1886, s. 18.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE- (*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
"225B	* Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class."
226	Unlawful return from transportation.	Ditto	Ditto	Not bailble	Ditto ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons	Ditto	Ditto	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
228	International insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ..	Ditto	Bailable	Ditto	Simple imprisonment for 6 months, or fine of Rs. 1,000 or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
229	Personation of a juror or assessor	Ditto ...	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting coin.	May arrest without warrant.	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.

233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto	...	Ditto	...	Ditto	...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

* Inserted by Act X of 1886, s. 13.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Concluded.)*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto	Ditto	Bailable	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
258	Sale of counterfeit Government stamp.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink, knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto		Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto		Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto		Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.		Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.		Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.		Ditto	...	Ditto	...	Ditto	...	Fine of 500 rupees		Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.		Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.		Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto		Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.		Court of Session.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.		Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Fine of 200 rupees ...		Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.		Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.		Ditto.
285	Dealing with fire or any combustible matter so as to endanger human endanger human life, &c.	May arrest without warrant.		Ditto	...	Ditto	...	Ditto	...	Ditto		Any Magistrate.
286	So dealing with any explosive substance.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto		Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, &c.—(*Concluded.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
287	So dealing with any machinery	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right, entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294A	Keeping a lottery-office ...	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
297	Trespassing in place of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto	Ditto	Compoundable.	Ditto	Ditto.

CHAPTER XVI—OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant	Not bailable	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto	Ditto	Ditto	Ditto	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for two years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XVI—OFFENCES AFFECTING THE HUMAN BODY.—*Continued.*)

Of Offences affecting Life.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	May arrest without warrant.	Warrant ..	Not bailable	Not compoundable.	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
306	Abetting the commission of suicide.	Ditto ..	Ditto .	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder	Ditto	Ditto .	Ditto ...	Ditto ...	Ditto	Ditto.
	If such act cause hurt to any person.	Ditto	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
	Attempt by life-convict to murder, if hurt is caused.	Ditto	Ditto .	Ditto ...	Ditto ..	Death, or as above ..	Ditto.
308	Attempt to commit culpable homicide.	Ditto .	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto .	Ditto ...	Ditto ...	Ditto .	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide ...	Ditto ...	Ditto ..	Ditto .	Ditto ..	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug ...	Ditto ...	Ditto ...	Not bailable	Ditto ..	Transportation for life and fine.	Court of Session.
	Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.						
312	Causing miscarriage.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child	Ditto ..	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable	Ditto ..	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

314	Death caused by an act done with intent to cause miscarriage	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine	Ditto.
	If act done without woman's consent.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or as above	Ditto
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, or fine, or both	Ditto
316	Causing death of a quick unborn child by an act amounting to culpable homicide	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto	Bailable	Ditto	Imprisonment of either description for 7 years, or fine, or both	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class

Of Hurt

323	Voluntarily causing hurt	Shall not arrest without warrant.	Summons	Bailable	Compoundable	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means	May arrest without warrant.	Ditto	Ditto	Compoundable when permission is given by the Court before which a prosecution is pending	Imprisonment of either description for 3 years, or fine, or both	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt	Ditto	Ditto	Ditto	Not compoundable.	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XVI- OFFENCES AFFECTING THE HUMAN BODY.—(*Continued.*)

Of Hurt.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may faciliate the commission of an offence.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to doanything which is illegal or which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportion for life, or imprisonment of either description for 10 years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not baliable	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.

335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto ...	Ditto ..	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto ..	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

Of Wrongful Restraint and Wrongful Confinement.

341	Wrongfully restraining any person.	May arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto	Ditto ...	Ditto ...	Ditto .	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto ..	Ditto ...	Ditto ..	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto .	Ditto ...	Ditto ...	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ..	Ditto .	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...	Ditto .	Ditto .	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto .	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 3 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*Continued*).

Of Wrongful Restraint and Wrongful Confinement—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Of Criminal Force and Assault.						
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Abduction, Slavery and Forced Labour.

363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage, or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Ditto	Ditto.
371	Habitual dealing in slaves ...	May arrest without warrant.	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour ...	Ditto ..	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

Of Rape.

376	Rape	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*Concluded.*)

Of Unnatural Offences.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
377	Unnatural offences ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

Of Extortion.

384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life ...	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life ...	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
395	Dacoity	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*Continued.*)

Of Robbery and Dacoity—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
396	Murder in dacoity ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Death, transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	Of Criminal Misappropriation of Property.						
403	Dishonest misappropriation of movable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

405	If by clerk or person employed by deceased.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

Of Criminal Breach of Trust.

406	Criminal breach of trust ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
413	Habitually dealing in stolen property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Cheating

1	2	3	4	5	6	7	8
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
417	Cheating	Shall not arrest without warrant	Warrant	Bailable	Not compoundable	Imprisonment of either description for 1 year or fine or both	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound either by law or by legal contract to protect.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class
419	Cheating by personation	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
420	Cheating and thereby dishonestly inducing delivery of property or the making alteration or destruction of a valuable security	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine	Court of Session Presidency Magistrate or Magistrate of the first class

Of Fraudulent Deeds and Dispositions of Property

421	Fraudulent removal or concealment of property &c to prevent distribution among creditors	Shall not arrest without warrant.	Warrant	Bailable	Not compoundable	Imprisonment of either description for 2 years, or fine both	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto
423	Fraudulent execution of deed of transfer containing a false statement of consideration	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.

424	Fraudulent removal or concealment of property, of himself, or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

Of Mischief.

426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Not compoundable.	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*(Continued.)*

Of Mischief—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel, or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death, or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
			Of Criminal Trespass.				
447	Criminal trespass ...	May arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

448	House-trespass ..	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft ...	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
453	Lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If the offence is theft. ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*Concluded.*)

Of Criminal Trespass—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence is theft ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 14 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-tres-pass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable	Ditto ...	Ditto	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*Concluded.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 7 years and fine.	Court of Session.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
	Of Trade and Property-Marks.						
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable. ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal tent a married woman.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ..	Ditto	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	.....	According to the provisions of section 29 of this Code.
	If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ... Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.*	Ditto ...	.....	
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	Ditto ...	.....	
	If punishable with fine only.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	.....	

* See *Empress* v. *Tegha Singh*, I. L. R. 8 Cal. 473

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
1A.—Power to arrest, or direct the arrest and to commit to custody a person committing an offence in his presence section 64 [Inserted by Act XII of 1891, Sched. II].
(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86.
(3) Power to issue proclamations in cases judicially before him, section 87.
(4) Power to attach and sell property in cases judicially before him, section 88.
(5) Power to restore attached property, section 89.
(6) Power to issue search-warrant, section 96.
(7) Power to endorse a search-warrant and order delivery of thing found, section 99.
(8) Power to record statements or confessions during a police investigation, section 164.
(9) Power to authorize detention of a person during a police investigation, section 167.
(10) Power to detain an offender found in Court, section 351.
(11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to make orders, &c., in possession cases, sections 145, 146 and 147.
(7) Power to commit for trial, section 206.*
(8) Power to stop proceedings when no complainant, section 249.
(9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(3) Power to make orders as to local nuisances, section 133.
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under section 144.
(6) Power to hold inquests, section 174.
(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to entertain complaints, section 191.
(9) Power to receive police reports, section 191.
(10) Power to entertain cases without complaint, section 191.
(11) Power to transfer cases to a Subordinate Magistrate, section 192.
(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
(14) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

V.—Ordinary powers of a District Magistrate.

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
(2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(4) Power to cancel bond for keeping the peace, section 125.
(5) Power to try summarily, section 260.
(6) Power to quash convictions in certain cases, section 350.
(7) Power to hear appeals from orders requiring security for good behaviour, section 406.
(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(9) Power to call for records, section 435.
(10) Power to revise orders passed under section 514 and section 515.

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* As to the powers of a Magistrate empowered with ordinary powers of a Magistrate of second class and also the powers to commit for trial under s. 206—See *Ramsundar* v. *Nirotam*, I. L. R. 6 All. 477.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.	BY THE LOCAL GOVERNMENT.	(1) Power to require security for good behaviour, section 110: (2) Power to make orders as to local nuisances, section 133: (3) Power to make orders prohibiting repetitions of nuisances, section 143: (4) Power to make orders under section 144: (5) Power to hold inquests, section 174: (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186: (7) Power to take cognizance of offences upon complaint, section 191: (8) Power to take cognizance of offences upon Police reports, section 191: (9) Power to take cognizance of offences upon information, section 191: (10) Power to try summarily, section 260: (11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407: (12) Power to sell property alleged or suspected to have been stolen, &c., section 524.
	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174. (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon Police reports, section 191: (6) Power to transfer cases, section 192.
POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED.	BY THE LOCAL GOVERNMENT.	(1) Power to pass sentences of whipping, section 32: (2) Power to make orders prohibiting repetitions of nuisances, section 143: (3) Power to make orders under section 144: (4) Power to hold inquests, section 174: (5) Power to take cognizance of offences upon complaint, section 191: (6) Power to take cognizance of offences upon Police reports, section 191: (7) Power to take cognizance of offences upon information, section 191: (8) Power to commit for trial, section 206.
	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon Police reports, section 191.
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT.	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon Police reports, section 191: (6) Power to commit for trial, section 206:
	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon Police reports, section 191.

POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	By the Local Government.	Power to call for records, section 435.

SCHEDULE V.

FORMS.

I.—Summons to an Accused Person.

(*See section* 68.)

To ..... of .....

Whereas your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*), before the (*Magistrate*) ..... of ...., on the.....day of..... .....

Herein fail not.

Dated this.....day of.....18

(*Seal.*) (*Signature.*)

II.—Warrant of Arrest.

(*See section* 75.)

To (*name and designation of the person or persons who is or are to execute the warrant.*)

Whereas.....of.....stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said..... and to produce him before me. Herein fail not.

Dated this.....day of.....18

(*Seal.*) (*Signature.*)

(*See section* 76.)

This warrant may be endorsed as follows :—

If the said.....shall give bail himself in the sum of....., with one surety in the sum of.....(*or* two sureties each in the sum of.....) to attend before me on the..... day of ..... and to continue so to attend until otherwise directed by me, he may be released.

Dated this..... .....day of.....18

(*Signature.*)

III.—Bond and Bail-bond after Arrest under a Warrant.

(*See section* 86.)

I, (*name*), of..... ....., being brought before the District Magistrate of..... .....(*or, as the case may be*) under a warrant issued to compel my appearance to answer to the charge of ....., do hereby bind myself to attend in the Court of.....on the.....day of.....next to answer to the said charge and to continue so to attend until otherwise directed by the Court ; and in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen-Empress of India the sum of rupees..... .....

Dated this..... .....day of.....18

(*Signature.*)

I do hereby declare myself surety for the abovenamed ..... of....., that he shall attend before.....in the Court of.....on the.....day of.....next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court ; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen-Empress of India the sum of rupees.....

Dated this.....day of.....18

(*Signature.*)

IV.—Proclamation requiring the Appearance of a Person Accused.

(*See section* 87.)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of.....; punishable under section.....of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said.....of..... is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within.....days from this date.

Dated this.....day of.....18 .

(*Seal.*) (*Signature.*)

V.—Proclamation requiring the Attendance of a Witness.

(*See section* 87.)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*), and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of.....on the.....day of.....next at.....o'clock, to be examined touching..... the offence complained of.

Dated this.....day of.....18 .

(*Seal.*) (*Signature.*)

VI.—Order of Attachment to compel the Attendance of a Witness.

(*See section* 88.)

To the Police-officer in charge of the Police-station at.....

Whereas a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that the said (*name of witness*) cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said .... to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said..... to the value of rupees..... ....

ORDER AUTHORISING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section* 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and there upon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared, and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of ,

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of 18

(*Seal.*) (*Signature*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS

(*See section* 90)

To (*name and designation of the Police officer or other person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint, and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so

THIS is to authorize and require you to arrest the said (*name*), and on the day of to bring him before this Court to be examined touching the offence complained of.

Given under my hand and the seal of the Court this day of 18

(*Seal*) (*Signature.*)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE

(*See section* 96)

To (*name and designation of the Police officer or other person or persons who is or are to execute the warrant*)

WHEREAS information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence),

THIS is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution

Given under my hand and the seal of the Court this day of 18

(*Seal.*) (*Signature*)

IX. WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section* 98)

To (*name and designation of a Police officer above the rank of a Constable*)

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state purpose in the words of the section*),

THIS is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required and to use, if necessary reasonable force for that purpose, and to search every part of the said house (*or other place, or, if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins *as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* seals *or* counterfeit coin (*as the case may be*)] and forthwith to bring before this Court such of the said things as may be taken possession of returning this warrant with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court this day of 18

(*Seal.*) (*Signature*)

X.—Bond to keep the Peace.

(*See Section* 106.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of....., I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen-Empress of India the sum of rupees .....

Dated this.....day of.....18 .

(*Signature.*)

XI.—Bond for Good Behaviour.

(*See sections* 109 *and* 110.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen-Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.....

Dated this.....day of.....18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*). We do hereby declare ourselves sureties for the abovenamed..... that he will be of good behaviour to Her Majesty the Queen-Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees.....

Dated this .....day of.....18 .

(*Signature.*)

XII.—Summons on Information of a probable Breach of the Peace.

(*See Sectio* 114.)

To... .....of.....

Whereas it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorized agent) at the Office of the Magistrate of.....on the.....day of.....18 at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees.....[*when sureties are required, add* and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of rupees.....(*each, if more than one*)], that you will keep the peace for the term of.....

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XIII.—Warrant of Commitment on Failure to find Security to keep the Peace.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at.....

Whereas (*name and address*) appeared before me in person (*or* by his authorized agent) on the .....day of.....in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees..... with one surety (*or* a bond with two sureties each in rupees .....), that he the said (*name*) would keep the peace for the period of.....months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this.....day of 18

(*Seal.*) (*Signature.*)

XIV.—Warrant of Commitment on Failure to find Security for Good Behaviour.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at.....

Whereas it has been made to appear to me that (*name and description*) has been and is lurking within the district of.....having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded, from which it appears that he is an habitual robber (*or* house-breaker, &c., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees....., and the said surety (*or* each of the said sureties) for rupees....., and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this..... day of .....18 .

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See sections* 123 *and* 124.)

To the Superintendent (*or* Keeper) of the Jail at.....(*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the.....day of.....

and has since duly given security under section.....of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court this..... day o .....18 .

(*Seal.*) (*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section* 133.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*), which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or* nuisance) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner (*or* are in possession of *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced);

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at ..... in the ..... Court of.....on the.....day of.....next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, &c.;

or

I do hereby direct and require you, &c., &c. (*as the case may be*).

Given under my hand and the seal of the Court this.....day of 18

(*Seal.*) (*Signature.*)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section* 138.)

WHEREAS on the.....day of ....., 18....., an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me by a petition bearing date the.....day of..... for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, &c., of the five or more jurors*) to be the Jury to try and decide the said question, and to require the said Jury to report their decision within.....days from the date of this order at my office at..... .

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section* 140.)

To (*name, description and address*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the.....day of.....have found that the order issued on the .....day of .....requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court this.....day 'of .....18 .

(*Seal.*) (*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(*See section* 142.)

To (*name, description and address*).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the ..... day of ....., 18....., is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(*See section* 143.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that, &c., (*state the proper recital, guided by* Form No. XVI *or* Form No. XXI, *as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c., (*as the case may be*).

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section* 144.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c., (*as the case may be,*) and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c., (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &c., IN DISPUTE.

(*See section* 145.)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names of description*) is true ;

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(*See section* 146.)

To the Police-officer in charge of the Police-station at..... [*or*, To the Collector of.....].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid] ;

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this ..... day of .....18 .

(*Seal.*) (*Signature.*)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER.

(*See section* 147.)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*) ; and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* " during the last of the seasons at which the same is capable of being enjoyed) " ;

I do order that the said (*the claimant or claimants in possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(*See section* 169.)

I, (*name*), of....., being charged with the offence of....., and after enquiry required to appear before the Magistrate of.....,

or

and after enquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at ....., in the Court of ....., on the..... day of ..... next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge ; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen-Empress of India the sum of rupees..... .

Dated this..... .....day of.....18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the above-said.....that he shall attend at....., in the Court of....., on the.....day of.....next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him; and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen-Empress of India the sum of rupees..... .

Dated this.....day of.....18 .

(*Signature.*)

XXVI.—Bond to Prosecute or give Evidence.

(*See section* 170.)

I (*name*), of (*place*), do hereby bind myself to attend at....., in the Court of....., at .....o'clock on the.....day of.....next, and then and there to prosecute (*or*, to prosecute and give evidence, *or* to give evidence) in the matter of a charge of.....against one *A. B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen-Empress of India the sum of rupees ..... .

Dated this.....day of.....18 .

(*Signature.*)

XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(*See section* 218.)

The Magistrate of.....hereby gives notice that he has committed one ..... for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c., (*state the offence as in the charge*).

Dated this.....day of ..... 18 .

(*Signature.*)

XXVIII.—Charges.

(*See sections* 221, 222, 223.)

(I.)—Charges with one Head.

(*a*) I (*name and office of Magistrate, &c.*) hereby charge you [*name of accused person*] as follows:—

(*b*) That you, on or about the.....day of....., at....., waged war against Her Majesty the Queen-Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate for* Court of Session *substitute* High Court].

On Penal Code, section 121.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

(2.) That you, on or about the.....day of....., at....., with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 124.

(3.) That you, being a public servant in the.....Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 161.

(4.) That you, on or about the .....day of ....., at....., did [*or* omitted to do, *as the case may be*].....such conduct being contrary to the provisions of Act....., section....., and known by you to be prejudicial to..... , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(5.) That you, on or about the .....day of....., at....., in the course of the trial of ..... , before....., stated in evidence that "....." which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

(6.) That you, on or about the.....day of....., at....., committed culpable homicide not amounting to murder, causing the death of ....., and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304.

(7.) That you, on or about the .....day of....., at....., abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306.

(8.) That you, on or about the .....day of....., at....., voluntarily caused grievous hurt to....., and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(9.) That you, on or about the..... day of....., at....., robbed [*state the name*], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

10. That you, on or about the.....day of....., at....., committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395.

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

(II.)—CHARGES WITH TWO OR MORE HEADS.

(*a*) I (*name and office of Magistrate, &c.*) hereby charge you [*name of accused person*] as follows:—

(*b*) *First.*—That you, on or about the .....day of....., at....., knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 241.

Secondly.—That you, on or about the.....day of ....., at....., knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charges.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

(2.) *First.*—That you, on or about the.....day of ....., at....., committed murder by causing the death of....., and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 302 and 304.

Secondly.—That you, on or about the.....day of....., at....., by causing the death of....., committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(3.) *First.*—That you, on or about the.....day of....., at....., committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

Secondly.—That you, on or about the.....day of ....., at....., committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the.....day of....., at....., committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the.....day of....., at....., committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(4) That you, on or about the.....day of....., at ....., in the course of the inquiry into ..... before....., stated in evidence that "... ....," and that you, on or about the..... day of ....., at ....., in the course of the trial of..... before....., stated in evidence that "....., one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

"[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

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* See *Sohan Sing*, Punj. Rec., 1888, p. 65.

(III.)—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I (*name and office of Magistrate, &c.*) hereby charge you (*name of accused person*) as follows :—

That you, on or about the..... day of ....., at ....., committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* { High Court, / Magistrate, } *as the case may be*].

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the ..... day of ....., had been convicted by the (*state the Court by which conviction was had*) at ..... of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections* 245 *and* 258.)

To the Superintendent (*or* Keeper) of the Jail at .....

WHEREAS on the ..... day of ....., 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. ..... of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or* sections) of the Indian Penal Code (*or* of Act .....), and was sentenced to (*state the punishment fully and distinctly ;*

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section* 250.)

To the Superintendent (*or* Keeper) of the Jail at .....

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees ..... as amends ; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in Jail for the period of ..... days, unless the aforesaid sum be sooner paid ;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty ; re turning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXI.—SUMMONS TO A WITNESS.

(*See sections* 68 *and* 252.)

To ..... of .....

WHEREAS complaint has been made before me that ..... of ..... has (*or* is suspected to have) committed the offence of (*state the offence concisely, with time and place*), and it appears to me that you are likely to give material evidence for the prosecution ;

You are hereby summoned to appear before this Court on the ..... day of ..... next, at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court ; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section* 326.)

To the District Magistrate of .....

WHEREAS a Criminal Session is appointed to be held in the Court-house at ..... on the ..... day of ..... next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this

Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(*See section* 328.)

To (*name*), of (*place*).

PURSUANT to a precept directed to me by the Court of Session of ..... requiring your attendance as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the ..... day of ..... next.

Given under my hand and seal of office this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section* 374.)

To the Superintendent (*or* Keeper) of the Jail at .....

WHEREAS at the Session held before me on the ..... day of ....., 18....., (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. ..... of the Calendar at the said Session was duly convicted of the offence of culpable homicide amounting to murder under section ..... of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the ..... Court of .....;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said ..... Court.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section* 381.)

To the Superintendent (*or* Keeper) of the Jail at .....

WHEREAS (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. ..... of the Calendar at the Session held before me on the ..... day of ..... 18....., has been, by a warrant of this Court, dated the ..... day of ....., committed to your custody under sentence of death, and whereas the order of the ..... Court of ..... confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said ..... to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(*See sections* 381 *and* 382.)

To the Superintendent (*or* Keeper) of the Jail at .....

WHEREAS at a Session held on the ..... day of ....., 18....., (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. ..... of the Calendar at the said Session, was convicted of the offence of ....., punishable under section ..... of the Indian Penal Code, and sentenced to ....., and was thereupon committed to your custody; and whereas by the order of the ..... Court of ..... (a duplicate of which is hereunto annexed), the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or, as the case may be*);

This is to authorize and require you the said Superintendent (*or* Keeper) safely to keep the said (*prisoner's name*) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said Jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court this ..... day of 18

(*Seal.*) (*Signature.*)

XXXVII.—Warrant to levy a Fine by Distress and Sale.

(*See section* 386.)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas (*name and description of the offender*) was, on the ..... day of ....., 18 ....., convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees ....., and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*), which may be found within the district of ..... ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (or forthwith) to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXVIII.—Warrant of Commitment in certain Cases of Contempt when a Fine is imposed.

(*See section* 480.)

To the Superintendent (*or* Keeper) of the Jail at .....

Whereas at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees ....., or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you the Superintendent (*or* Keeper) of the said Jail to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XXXIX.—Magistrate's or Judge's Warrant of Commitment of Witness refusing to answer.

(*See section* 485.)

To (*name and designation of officer of Court*).

Whereas (*name and description*), being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody, and him safely to keep in your custody for the space of .....days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this ..... day of ..... 18 .

(*Seal.*) (*Signature.*)

XL.—Warrant of Imprisonment on Failure to pay Maintenance.

(*See section* 488.)

To the Superintendent (*or* Keeper) of the Jail at .....

Whereas (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees..... ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees..... , being the amount of the allowance for the month (*or* months) of..... : And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said Jail for the period of ..... ;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this.....day of 18

(*Seal.*) (*Signature.*)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section* 488.)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or* child-for maintenance the monthly sum of rupees....., and whereas the said (*name*) in wilful dis) regard of the said order has failed to pay rupees....., being the amount of the allowance for the month (*or* months) of.....;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of....., and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(*See sections* 490 *and* 499.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of....., and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen Empress of India the sum of rupees.....

Dated this.....day of.....18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of.....on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen-Empress of India the sum of rupees.....

Dated this.....day of.....18 .

(*Signature.*)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section* 500.)

To the Superintendant (*or* Keeper) of the Jail at.....

(*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the.....day of....., and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Signature.*)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section* 514.)

To the Police-officer in charge of the Police-station at.....

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen-Empress of India the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any moveable property of the said (*name*) that you may find within the district of ....., by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this ..... day of .....18 .

(*Seal.*) (*Signature.*)

XLV.—Notice to Surety on Breach of a Bond.

(*See section* 514.)

To ..... of .....

Whereas on the ..... day of ..... 18 ..... you became surety for (*name*), of (*place*), that he should appear before this Court on the ..... day of ....., and bound yourself in default thereof to forfeit the sum of rupees ..... to Her Majesty the Queen-Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees .....;

You are hereby required to pay the said penalty, or show cause, within ..... days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court this ..... day of .....18 .

(*Seal.*) (*Signature.*)

XLVI.—Notice to Surety of Forfeiture of Bond for Good Behaviour.

(*See section* 514.)

To ..... of ..... .

Whereas on the ..... day of ....., 18....., you became surety by a bond for (*name*), of (*place*), that he would be of good behaviour for the period of ...., and bound yourself in default thereof to forfeit the sum of rupees ..... to Her Majesty the Queen-Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your surety bond has become forfeited;

You are hereby required to pay the said penalty of rupees ....., or to show cause within ..... days why it should not be paid.

Given under my hand and the seal of the Court this ..... day of ....18 .

(*Seal.*) (*Signature.*)

XLVII.—Warrant of Attachment against a Surety.

(*See section* 514.)

To .....;

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen-Empress of India the sum of rupees ..... (*the penalty in the bond*).

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of ....., by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this ..... day of .....18 .

(*Seal.*) (*Signature.*)

XLVIII.—Warrant of Commitment of the Surety of an accused Person admitted to Bail.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .....

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of ..... (*state the condition of the bond*), and ..... the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen-Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody with this warrant, and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this ..... day of 18

(*Seal.*) (*Signature.*)

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To (*name, description and address*).

WHEREAS, on the.....day of.....18....., you entered into a bond not to commit, &c. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees....., or to show cause before me within..... ..days why payment of the same should not be enforced against you.

Dated this.....day of.....18 .

(*Seal.*) (*Signature.*)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To (*name and designation of Police-officer*) at the Police-station of .....

WHEREAS (*name and description*) did, on the.....day of .....18....., enter into a bond for the sum of rupees....., binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded, and whereas notice has been given to the said (*name*), calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees..... which you may find within the district of....., and, if the said sum be not paid within ....., to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at.....

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen-Empress of India the sum of rupees.....; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To the Police-officer in charge of the Police-station at.....

WHEREAS (*name, description and address*) did, on the.....day of.....18....., give security by bond in the sum of rupees.....for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of....., whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*), calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees..... which you may find within the district of..... ....., and, if the said sum be not paid within....., to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at.....

WHEREAS (*name, description and address*) did, on the.....day of.....18 ....., give security by bond in the sum of rupees..... for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen-Empress of India the sum of rupees .....; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this.....day of .....18 .

(*Seal.*) (*Signature.*)

APPENDIX.

REGULATION No. V OF 1892.

A Regulation to provide for the administration of Criminal Justice in Upper Burma.

Received the assent of the Governor-General on the 28th December 1892: published in the "Gazette of India" on the 31st December 1892 and in the "Burma Gazette" of the same date.

WHEREAS it is expedient to provide for the administration of Criminal Justice in Upper Burma; It is hereby enacted as follows:—

1. (1).—This Regulation may be called the Upper Burma Criminal Justice Regulation, 1892; and

(2).—It shall come into force on the 1st January, 1893.

2. (1).—Subject to the modifications set forth in the schedule to this Regulation, the Code of Criminal Procedure, X of 1882, as amended for the time being by subsequent enactments (which Code as so amended is in this Regulation referred to as "the Code") shall extend to the whole of Upper Burma, except the Shan States, so far as it can be made applicable in the circumstances for the time being.

(2).—For the purpose of facilitating the application of the Code, any Magistrate or Court may construe any provision therein with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the Magistrate or Court.

3.—All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules and appointments made, under the Code of Criminal Procedure, 1882, as modified by Regulation VII of 1886 or Regulation VI of 1890, shall, so far as may be practicable, be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding provision of the said Code as modified by this Regulation.

SCHEDULE.

Modifications subject to which the Code is to extend to Upper Burma with the exception of the Shan States.

(Section 2, sub-section 1.)

I.—Except in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the expression "High Court" shall mean the officer appointed by the Local Government with the previous sanction of the Governor-General in Council to be the Judicial Commissioner of Upper Burma.

II.—(1) Subject to the provisions of sub-sections (2) and (3), each division for the time being administered by a Commissioner shall be a Sessions division, the Court of the Commissioner shall be the Court of Session for the Sessions division, and the Commissioner shall be the Judge of the Court of Session.

(2) The Local Government may, by notification in the official Gazette, exclude any district or part of a district from a Sessions division constituted under sub-section (1), and may, in like manner, cancel or vary any such notification.

(3) While a notification under sub-section (2) is in force with respect to any district or part of a district, the following consequences shall ensue, namely:—

(*a*) the district or the part of a district, as the case may be, shall be a Sessions division; the Court of the District Magistrate shall be the Court of Session for the Sessions division, and the District Magistrate shall be the Judge of the Court of Session, and,

(*b*) as Judge of the Court of Session the District Magistrate may take cognizance of any offence as a Court of original jurisdiction without the accused person being committed to him by a Magistrate, and when so taking cognizance of an offence shall, subject to the provisions of this Regulation, follow the procedure prescribed for the trial of warrant cases by Magistrate.

(4) Whenever a notification is published under sub-section (2) it shall be immediately reported by the Local Government to the Governor-General in Council.

(5) Subject to such rules as the Local Government may from time to time make in this behalf, a trial before a Court of Session may be without jury or aid of assessors.

III.—Notwithstanding anything in Act V of 1861, or in any other enactment for the time being in force, the Local Government may confer on any police officer all or any of the powers conferred or conferable by or under the Code on any Magistrate, in regard to particular cases, or to a particular class or particular classes of cases or to cases generally.

IV.—(1) A Magistrate of any class may pass a sentence of whipping.

(2) A Magistrate of the second class may pass a sentence of whipping, without being specially empowered in that behalf by the Local Government.

(3) A Magistrate of the third class shall not pass a sentence of whipping unless he is specially empowered in that behalf by the Local Government.

V.—Magistrates described in the first column of the following table shall have the powers severally specified against them in the second column thereof, without being further empowered in that behalf :—

MAGISTRATES.	POWERS.
1	2
Magistrates of the first class	To require security for good behaviour, section 110. To make orders as to local nuisances, section 133. To make orders prohibiting repetition of nuisances, section 143. To make orders under section 144. To entertain cases without complaint, section 191, clause (*c*)
Magistrates of the first or second class	To entertain complaints, section 191, To receive police reports, section 191, clause (*b*).
Sub-divisional Magistrates	To call for records, section 435.

VI.—In any Police-station to which the provisions of this section may be specially applied by the Local Government by notification in the official Gazette, any Police-officer may exercise the powers conferred by section 55 on an officer in charge of a Police-station.

VII.—(1) Notwithstanding anything in section 57 or section 61, an officer in charge of any Police-station to which the provisions of this section may be specially applied by the Local Government, by notification in the official Gazette, may detain a person arrested without warrant so long as under all the circumstances of the case is reasonable.

(2) But when the officer, of his own authority, detains any such person in custody for a longer period than twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, he shall state in the report prescribed in section 62 his reasons for prolonging the detention of the person; and, where the detention extends beyond three days, shall submit further reports of the reasons therefore at such intervals as the Magistrate, to whom the report under section 62 was submitted, may by general or special order direct.

VIII.—A District Magistrate tendering a pardon to an accomplice under section 337 may, notwithstanding anything in that section, try the case himself.

IX.—Notwithstanding anything in the Code, the Local Government may from time to time make rules with respect to the record to be made in cases tried by such village headmen as a Magistrate of the third class and as to the disposal of the record.

X.—A person convicted on a trial held by a District Magistrate acting as such with respect to a district or part of a district which has been excluded from a Sessions division under sub-section (2) of section 11 of this schedule may appeal to the Court of Session of the Sessions division from which the district or the part of a district has been so excluded.

XI.—Notwithstanding anything in this schedule or in the Code, an appeal shall not lie in any case in which a District Magistrate or Court of Session passes a sentence of imprisonment for a term not exceeding six months, or of fine not exceeding five hundred rupees or of whipping, or of all or any of those punishments combined.

XII.—(1) The District Magistrate may in any case in which he has himself called for, or a Sub-Divisional Magistrate has forwarded to him, the record of a proceeding before a Magistrate of the second or of the third class, pass such order in the case as he thinks fit:

Provided that he shall not pass a severer sentence for the offence which, in his opinion, the accused has committed than might have been passed for such offence by the Magistrate who tried the case, and that no order shall be made to the prejudice of the accused unless he has had an opportunity of showing cause against it.

(2) The Governor-General in Council or the Local-Government may at any time, by notification in the official Gazette, direct that this section shall cease to be in force in any district with effect from a date to be specified in the notification.

XIII.—In any case in which an appeal lies, the Appellate Court may enhance any punishment which has been awarded :

Provided that, if the appeal is from the sentence of a Magistrate of any class, the Appellate Court shall not inflict a greater punishment than might have been inflicted by a Magistrate of the first class.

XIV.—Notwithstanding anything in section 495, a Court may allow any Police-officer to conduct a prosecution.

XV.—Notwithstanding anything in the Code, a finding, sentence or order shall not be reversed or altered on appeal or revision on account of any irregularity of procedure unless the irregularity has occasioned a failure of justice.

XVI.—Rules under section 553, clause (*c*), may regulate the following among other matters, namely :—

(*a*) the fees to be paid for processes ; and

(*b*) the fees to be paid for copies and inspection of records.

XVII.—Nothing in this schedule with respect to procedure in inquiries or trials, or with respect to sentences or appeals therefrom, or the enhancement or execution thereof, shall be construed to affect the Code in its application to European British subjects.

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